

Message

---

**From:** Abboud, Michael [abboud.michael@epa.gov]  
**Sent:** 6/26/2019 3:34:05 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]  
**CC:** Beach, Christopher [beach.christopher@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Konkus, John [konkus.john@epa.gov]  
**Subject:** RE: EPA's proposed FOIA regulations

Can do. So this is what it looks like now.

**Deliberative Process Privilege / Attorney-Client / Ex. 5**

## Deliberative Process Privilege / Attorney-Client / Ex. 5

**From:** Epp, Timothy

**Sent:** Wednesday, June 26, 2019 11:23 AM

**To:** Abboud, Michael <abboud.michael@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>

**Cc:** Beach, Christopher <beach.christopher@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Konkus, John <konkus.john@epa.gov>

**Subject:** RE: EPA's proposed FOIA regulations

Mike

**Deliberative Process Privilege / Attorney-Client / Ex. 5**

## Deliberative Process Privilege / Attorney-Client / Ex. 5

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Abboud, Michael

**Sent:** Wednesday, June 26, 2019 10:59 AM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>

**Cc:** Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>

**Subject:** FW: EPA's proposed FOIA regulations

**Deliberative Process Privilege / Attorney-Client / Ex. 5**

# Deliberative Process Privilege / Attorney-Client / Ex. 5

---

**From:** Kevin Bogardus <[kbogardus@eenews.net](mailto:kbogardus@eenews.net)>

**Sent:** Wednesday, June 26, 2019 8:50 AM

**To:** Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Hewitt, James <[hewitt.james@epa.gov](mailto:hewitt.james@epa.gov)>; Press <[Press@epa.gov](mailto:Press@epa.gov)>

**Subject:** RE: EPA's proposed FOIA regulations

Hey guys, any progress on the below? Please let me know as soon as possible. My deadline is noon EST today. Thanks for your help.

-Kevin

---

**From:** Kevin Bogardus

**Sent:** Tuesday, June 25, 2019 5:50 PM

**To:** 'Schiermeyer, Corry' <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; 'Konkus, John' <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; 'Abboud, Michael' <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; 'Hewitt, James' <[hewitt.james@epa.gov](mailto:hewitt.james@epa.gov)>; 'Press' <[Press@epa.gov](mailto:Press@epa.gov)>

**Subject:** EPA's proposed FOIA regulations

Hey everyone,

It's Kevin Bogardus with E&E News.

I'm working on a story about EPA's proposed Freedom of Information Act regulations, which were in today's public inspection issue of *The Federal Register* and could be published as soon as tomorrow (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-13290.pdf>). I have spoken with several environmental groups who have sued EPA over FOIA and are critical of these proposed regulations. I had a few questions about this, which are:

- They criticized EPA political appointees being authorized to issue final determinations on FOIA requests, including whether to release or withhold a record on "the basis of responsiveness" and issue "no records" responses under the proposal (please see page 23), saying that politicized the process and pointed to the a D.C. Circuit opinion that said agencies have "no authority" under FOIA to redact particular information from a responsive record on the theory that said information is "non-responsive" (please see *Am. Immigration Lawyers*

*Ass'n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (D.C. Cir. 2016)). What is EPA's response to this criticism?

- They also criticized EPA regional offices no longer being able to accept FOIA requests under the proposal (please see page 9 and 10), given the size of the FOIA backlog at EPA headquarters and that could discount the expertise of career FOIA staff in EPA regional offices. What EPA's response to this criticism?
- EPA is not taking public comment on this proposal (please see page 5), although several groups told me they wish to comment since they believe these changes to EPA's FOIA regulations are substantial under this proposal. Will EPA reconsider and allow public comment on this proposal? Why or why not?

Please get back to me as soon as possible. My deadline is noon EST Wednesday, June 26, but the sooner you get back to me, the more it helps my reporting. Thank you for your help.

**Kevin Bogardus**

E&E News Reporter

[kbogardus@eenews.net](mailto:kbogardus@eenews.net)

202-446-0401 (p)

Ex. 6 Personal Privacy (PP)

202-737-5299 (f)

Follow me [@KevinBogardus](https://twitter.com/KevinBogardus)

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**E&E News**

122 C Street, NW, Suite 722, Washington, DC 20001

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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

Message

---

**From:** Abboud, Michael [abboud.michael@epa.gov]  
**Sent:** 6/25/2019 3:46:38 PM  
**To:** Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]  
**CC:** Beach, Christopher [beach.christopher@epa.gov]; Hewitt, James [hewitt.james@epa.gov]; Konkus, John [konkus.john@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]  
**Subject:** FW: EPA to funnel all FOIA requests through legal office

### Ex. 5 Deliberative Process (DP)

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**From:** POLITICO Pro Energy Whiteboard <politicoemail@politicopro.com>  
**Sent:** Tuesday, June 25, 2019 11:44 AM  
**To:** Abboud, Michael <abboud.michael@epa.gov>  
**Subject:** EPA to funnel all FOIA requests through legal office

By Alex Guillén

06/25/2019 11:42 AM EDT

EPA will consolidate all Freedom of Information Act requests into a central office in a move the agency says is meant to curb misdirected records requests.

In a final rule to be published in Wednesday's Federal Register, EPA makes a series of changes to its internal FOIA rules, which were last overhauled in 2002. Since then, Congress has passed three laws making significant changes to FOIA administration.

EPA says all FOIA requests will now be routed through its National FOIA Office in the Office of General Counsel. The public previously could choose to direct requests either to EPA headquarters or one of its ten regional offices. EPA said that having all requests clear through one office will "minimize the number of misdirected requests."

The rule also clarifies which officials have the "authority" to issue FOIA determinations, including to decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses." The list includes the administrator, deputy administrator, assistant administrators and their deputies and other specific top officials. EPA said the change "eliminates a potential conflict in the existing regulations and ensures consistency of responses across the Agency."

The agency made several other minor tweaks, such as a clarification that a request must be submitted by 5 p.m. ET to be deemed received on that date.

EPA also said it will undertake a separate rulemaking with public comment for "certain discretionary and modernizing changes that the EPA is considering." It didn't further describe those potential changes.

*To view online:*

<https://subscriber.politicopro.com/energy/whiteboard/2019/06/epa-to-funnel-all-foia-requests-through-legal-office-3484168>

You received this POLITICO Pro content because your customized settings include: Energy: EPA. To change your alert settings, please go to <https://subscriber.politicopro.com/settings>

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# POLITICOPRO

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This email was sent to [abboud.michael@epa.gov](mailto:abboud.michael@epa.gov) by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

---

Message

---

**From:** Abboud, Michael [abboud.michael@epa.gov]  
**Sent:** 6/25/2019 3:32:43 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Konkus, John [konkus.john@epa.gov]  
**Subject:** FW: requesting a retraction

# Ex. 5 AC/DP

**From:** Miranda Green <mgreen@thehill.com>  
**Sent:** Tuesday, June 25, 2019 11:14 AM  
**To:** Abboud, Michael <abboud.michael@epa.gov>  
**Subject:** Re: requesting a retraction

Can you provide a statement to us, reiterating what you said on the phone-- specifically saying that you don't intend to use "no response" authority in the way I described?

On Tue, Jun 25, 2019 at 11:03 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

Thank you please give me an update as soon as possible.

Sent from my iPhone

On Jun 25, 2019, at 11:00 AM, Miranda Green <mgreen@thehill.com> wrote:

I got this Michael, I will be talking with my editor shortly and will get back to you.

On Tue, Jun 25, 2019 at 10:42 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

Miranda, please also flag for your editor, the premise of the your entire article is incorrect, and I would recommend retracting it. Your false description of a "no records" response as a denial of a FOIA request leads to inaccuracies throughout the whole piece. A "no records" response is inherently a "granting" of a FOIA request, in which a search was conducted and no records were discovered.

Your headline is inaccurate in how it describes the new regulation. EPA is not "expanding" political appointees powers to turn down FOIA requests. What we have done with this new rule is restated in a single place that political and career agency officials who are authorized to issue determinations under the FOIA statute. The 2002 regulation was ambiguous in its description of who held this authority previously.



The following statements are false, as you can tell from the extensive inaccuracies it would be better to retract and start over.

Political appointees at the Environmental Protection Agency (EPA) will soon have the authority to reject public information requests without explanation.

The EPA's new Freedom of Information Act (FOIA) rule will expand the ability of the agency's administrator and other administration officials to withhold sought-after documents by labeling them "non-responsive," according to a copy of the final rule obtained by The Hill.

According to the new language in the FOIA rule signed by EPA chief Andrew Wheeler last week, the administrator and other officials would be allowed to review all materials that fit a FOIA request criteria, known as responsive documents, and then decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses."

EPA officials who would be authorized to make that decision include the administrator, deputy administrators, assistant administrators, deputy assistant administrators, regional administrators, deputy regional administrators, general counsel, deputy general counsels, regional counsels, deputy regional counsels and the inspector general or delegates of those individuals, according to the final rule.

A "no records" response would allow records seekers to be told there are no documents meeting their search criteria, even if they were found but withheld by the political appointees.

The blanket explanation for non-responsive materials may also make it harder for groups or individuals to legally challenge any of EPA's decisions to withhold documents, because it will be more difficult to prove they were withheld unlawfully. A person appealing their FOIA response would not know if any documents were withheld under a "no records" response.

Bell equated EPA's new FOIA rule to a similar regulatory action unveiled earlier this year at the Interior Department, called an "awareness review," which allows political appointees 72 hours to review documents that mention them by name prior to release.

While the EPA administrator and other political appointees have had the ability to grant or deny FOIA requests, doing so under the "basis of responsiveness" and "no response" option is a new addition in the forthcoming rule.

Bell warned that the new order could allow EPA political appointees to better control the documents ultimately released by regional offices. He said regional offices often have less political pressure to withhold more responsive materials.

"This is just making sure that every FOIA request that gets reviewed gets taken down the hall or next door to Andrew Wheeler's office," Bell said. "Basically, anytime a FOIA request goes up to the administration you can extend however long it will take and reduce what you get back."

--

Miranda Green  
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[mgreen@thehill.com](mailto:mgreen@thehill.com)  
@mirandacgreen

--

Miranda Green  
Energy and Environment Reporter, The Hill  
202-999-0660  
[mgreen@thehill.com](mailto:mgreen@thehill.com)

@mirandacgreen

Message

**From:** Abboud, Michael [abboud.michael@epa.gov]  
**Sent:** 6/24/2019 10:20:36 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Konkus, John [konkus.john@epa.gov]  
**Subject:** RE: Follow up qs

She said this was helpful. Story should publish tomorrow morning.

---

**From:** Epp, Timothy  
**Sent:** Monday, June 24, 2019 5:37 PM  
**To:** Abboud, Michael <abboud.michael@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>  
**Subject:** RE: Follow up qs

Hi Mike —

**Ex. 5 AC/DP**

**Ex. 5 AC/DP**

Tim

**Timothy R. Epp**

| [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Abboud, Michael  
**Sent:** Monday, June 24, 2019 5:18 PM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>; Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>  
**Subject:** FW: Follow up qs

Tim –

## Ex. 5 AC/DP

**From:** Miranda Green <[mgreen@thehill.com](mailto:mgreen@thehill.com)>  
**Sent:** Monday, June 24, 2019 4:41 PM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>  
**Subject:** Re: Follow up qs

Thanks Michael.

I think I might have reported on the FOIA office change last Feb. Does this sound right, it is buried in the news of the science office reorg...

I reported that it would be under the Office of Resource Management: <https://thehill.com/regulation/energy-environment/375725-major-epa-reorganization-will-end-science-research-program>

And looks like that office works in tandem with OGC? : <https://www.epa.gov/aboutepa/organization-chart-office-general-counsel-ogc>

From EPA's website: "The Resource Management Office coordinates the management and administrative activities of the Office of General Counsel."

Thanks,

On Mon, Jun 24, 2019 at 4:08 PM Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)> wrote:

See bold below.

**From:** Miranda Green <[mgreen@thehill.com](mailto:mgreen@thehill.com)>  
**Sent:** Monday, June 24, 2019 1:37 PM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>  
**Subject:** Follow up qs

Hi Michael,

A couple follow up questions for you as I finished up going through this whole thing. And also when do you ideally want this to run before today?

- Do you have a notice of when EPA officially moved the National FOIA program under the General Counsel? Tim said it was last year...

**No agency-wide announcement was made at the time.**

-- To clarify, the new rule states: "Authority to Issue Final Determinations. The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General or those individuals' delegates, are authorized to make determinations required by 5 U.S.C. 552(a)(6)(A), including to issue final determinations whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue "no records" responses. "

Does this language broaden who this authority can be given to?

**This provision is not intended to be broader than the old regulations, which covered the subject in several provisions. See 40 CFR 2.103(b) & 2.104(h). The old regulations state that "The head of an office, or that individual's designee, is authorized to grant or deny any request for a record of that office or other Agency records when appropriate." 40 CFR 2.103(b). All positions listed in the updated regulations fall within the ordinary meaning of "the head of an office, or that individual's designee."**

- How will these new changes affect older FOIA requests waiting to be filled?

**This rulemaking will not have an impact on pending FOIA requests. The Agency was already complying with the statutory amendments. The rulemaking merely conforms the Agency's regulations to the statute, as amended, by eliminating inconsistent provisions and adding required changes. Already submitted, pending FOIA requests will not be impacted by the creation of a single FOIA request submission point.**

Thanks!

--

Miranda Green

Energy and Environment Reporter, The Hill

202-999-0660

[mgreen@thehill.com](mailto:mgreen@thehill.com)

..... @mirandacgreen

--

Miranda Green  
Energy and Environment Reporter, The Hill  
202-999-0660  
[mgreen@thehill.com](mailto:mgreen@thehill.com)  
[@mirandacgreen](#)

Message

---

**From:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Sent:** 6/24/2019 8:04:20 PM  
**To:** Abboud, Michael [abboud.michael@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Konkus, John [konkus.john@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Subject:** RE: Follow up qs

Hi Mike – my comments in **bold below**.

**Ex. 5 AC/DP**

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Abboud, Michael  
**Sent:** Monday, June 24, 2019 1:52 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Konkus, John <konkus.john@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>  
**Subject:** FW: Follow up qs

**Ex. 5 AC/DP**

**From:** Miranda Green <[mgreen@thehill.com](mailto:mgreen@thehill.com)>  
**Sent:** Monday, June 24, 2019 1:37 PM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>  
**Subject:** Follow up qs

Hi Michael,

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- Do you have a notice of when EPA officially moved the National FOIA program under the General Counsel? Tim said it was last year...

**Ex. 5 AC/DP**

-- To clarify, the new rule states: "Authority to Issue Final Determinations. The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators,



General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General or those individuals' delegates, are authorized to make determinations required by 5 U.S.C. 552(a)(6)(A), including to issue final determinations whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue "no records" responses. "

Does this language broaden who this authority can be given to?

**Ex. 5 AC/DP**

- How will these new changes affect older FOIA requests waiting to be filled?

**Ex. 5 AC/DP**

Thanks!

--

Miranda Green  
Energy and Environment Reporter, The Hill  
202-999-0660  
[mgreen@thehill.com](mailto:mgreen@thehill.com)  
[@mirandacgreen](https://twitter.com/mirandacgreen)

Message

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**From:** Abboud, Michael [abboud.michael@epa.gov]  
**Sent:** 6/24/2019 7:56:57 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Konkus, John [konkus.john@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Subject:** Re: Follow up qs

**Ex. 5 AC/DP**

Sent from my iPhone

On Jun 24, 2019, at 1:51 PM, Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)> wrote:

**Ex. 5 AC/DP**

**From:** Miranda Green <[mgreen@thehill.com](mailto:mgreen@thehill.com)>  
**Sent:** Monday, June 24, 2019 1:37 PM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>  
**Subject:** Follow up qs

Hi Michael,

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- Do you have a notice of when EPA officially moved the National FOIA program under the General Counsel? Tim said it was last year...

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- How will these new changes affect older FOIA requests waiting to be filled?

Thanks!

--

Miranda Green  
Energy and Environment Reporter, The Hill  
202-999-0660  
[mgreen@thehill.com](mailto:mgreen@thehill.com)  
[@mirandacgreen](#)

Message

---

**From:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**Sent:** 5/23/2019 11:17:04 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]  
**Subject:** RE: Requests for non-significant determinations

Thanks Tim!

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

---

**From:** Epp, Timothy  
**Sent:** Thursday, May 23, 2019 6:24 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>  
**Subject:** Fwd: Requests for non-significant determinations

FYI — email below from OMB **Ex. 5 Deliberative Process (DP)**

Tim

Sent from my iPhone

Begin forwarded message:

**From:** "Manibusan, Mary" <Manibusan.Mary@epa.gov>  
**Date:** May 23, 2019 at 5:36:04 PM EDT  
**To:** "Epp, Timothy" <Epp.Timothy@epa.gov>  
**Cc:** "Muellerleile, Caryn" <Muellerleile.Caryn@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Curry, Bridgid" <Curry.Bridgid@epa.gov>  
**Subject:** FW: Requests for non-significant determinations

Tim,

**Ex. 5 Deliberative Process (DP)**

We

will also record this in our internal ADP Tracker.

Thank you!  
Mary

---

**From:** Whiteman, Chad S. EOP/OMB **Ex. 6 Personal Privacy (PP)**  
**Sent:** Thursday, May 23, 2019 4:50 PM  
**To:** Wiggins, Lanelle <Wiggins.Lanelle@epa.gov>  
**Cc:** Manibusan, Mary <Manibusan.Mary@epa.gov>  
**Subject:** RE: Requests for non-significant determinations

Lanelle,

## **Ex. 5 Deliberative Process (DP)**

Thanks,  
Chad

Message

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**From:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Sent:** 6/26/2019 1:37:25 PM  
**To:** Walker, Denise [Walker.Denise@epa.gov]; Cunningham, Bisa [cunningham.bisa@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]  
**Subject:** FW: FOIA regulation -- need your input; & report re news media  
**Attachments:** Draft congressional letter on FOIA.ebp.docx

Here are Elise's edits.

Tim

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

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**From:** Packard, Elise  
**Sent:** Wednesday, June 26, 2019 9:35 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: FOIA regulation -- need your input; & report re news media

Some minor thoughts, looks good though!

Elise B. Packard  
Acting Deputy General Counsel  
U.S. EPA Office of General Counsel, Rm. 4020A  
(202) 564-7729

---

**From:** Epp, Timothy  
**Sent:** Wednesday, June 26, 2019 9:13 AM  
**To:** Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: FOIA regulation -- need your input; & report re news media

# Ex. 5 AC/DP

Tim

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office

EPA Office of General Counsel

---

**From:** Leopold, Matt (OGC)

**Sent:** Wednesday, June 26, 2019 8:03 AM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>

**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** RE: FOIA regulation -- need your input; & report re news media

**Ex. 5 AC/DP**

**Matthew Z. Leopold**

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

---

**From:** Epp, Timothy

**Sent:** Wednesday, June 26, 2019 7:37 AM

**To:** Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>

**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** FOIA regulation -- need your input; & report re news media

**Ex. 5 AC/DP**

# Ex. 5 AC/DP

Tim

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Leopold, Matt (OGC)

**Sent:** Tuesday, June 25, 2019 5:27 PM

**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>

**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** RE: FOIA regulation news media

# Ex. 5 AC/DP

Thanks, Matt

**Matthew Z. Leopold**

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

---

**From:** Epp, Timothy  
**Sent:** Tuesday, June 25, 2019 4:41 PM  
**To:** Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>  
**Subject:** FOIA regulation news media

Matt,

# Ex. 5 AC/DP

Tim

**From:** POLITICO Pro Energy Whiteboard <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>  
**Sent:** Tuesday, June 25, 2019 11:44 AM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>  
**Subject:** EPA to funnel all FOIA requests through legal office

By Alex Guillén

06/25/2019 11:42 AM EDT

EPA will consolidate all Freedom of Information Act requests into a central office in a move the agency says is meant to curb misdirected records requests.

In a final rule to be published in Wednesday's Federal Register, EPA makes a series of changes to its internal FOIA rules, which were last overhauled in 2002. Since then, Congress has passed three laws making significant changes to FOIA administration.

EPA says all FOIA requests will now be routed through its National FOIA Office in the Office of General Counsel. The public previously could choose to direct requests either to EPA headquarters or one of its ten regional offices. EPA said that having all requests clear through one office will "minimize the number of misdirected requests."

The rule also clarifies which officials have the "authority" to issue FOIA determinations, including to decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses." The list includes the administrator, deputy administrator, assistant administrators and their deputies and other specific top officials. EPA said the change "eliminates a potential conflict in the existing regulations and ensures consistency of responses across the Agency."

The agency made several other minor tweaks, such as a clarification that a request must be submitted by 5 p.m. ET to be deemed received on that date.

EPA also said it will undertake a separate rulemaking with public comment for "certain discretionary and modernizing changes that the EPA is considering." It didn't further describe those potential changes.



To view online:

<https://subscriber.politicopro.com/energy/whiteboard/2019/06/epa-to-funnel-all-foia-requests-through-legal-office-3484168>

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office

EPA Office of General Counsel

---

**From:** Konkus, John

**Sent:** Tuesday, June 25, 2019 4:11 PM

**To:** Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>

**Cc:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>

**Subject:** RE: New headline, **Ex. 5 AC/DP**

After a long conversation with the editor, we got a formal correction and the article updated a second time:

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

*CORRECTION: A previous version of this story mischaracterized the scope of the new rule and misstated some of the authorities that come with it.*

---

**From:** Jackson, Ryan

**Sent:** Tuesday, June 25, 2019 2:22 PM

**To:** Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>

**Cc:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>

**Subject:** Re: New headline, **Ex. 5 AC/DP**

Is it enough?

Ryan Jackson  
Chief of Staff  
U.S. EPA

Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 1:17 PM, Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)> wrote:

**Ex. 5 AC/DP**

**From:** Abboud, Michael

**Sent:** Tuesday, June 25, 2019 2:14 PM

**To:** Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>

**Subject:** New headline, **Ex. 5 AC/DP**

New:

<image001.png>

Old:

<image002.png>

**Michael Abboud**

U.S. Environmental Protection Agency  
Office of Public Affairs

M: **Ex. 6 Personal Privacy (PP)**

Message

---

**From:** Creech, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=87B8993F1A0E42FCB26D654DD8F2E377-CREECH, CHR]  
**Sent:** 6/26/2019 9:43:33 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** Messaging

# Ex. 5 AC/DP

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel | U.S. Environmental Protection Agency  
(202) 564-4286 | WJCN Room 7353E | [creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)



Message

---

**From:** Creech, Christopher [Creech.Christopher@epa.gov]  
**Sent:** 7/1/2019 12:17:11 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** Re: FOIA Request EPA-HQ-2019-006941 Modified

Thank you.

---

**From:** Epp, Timothy  
**Sent:** Monday, July 1, 2019 7:25:10 AM  
**To:** Creech, Christopher  
**Subject:** FW: FOIA Request EPA-HQ-2019-006941 Modified

FYI

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

**From:** admin@foiaonline.gov <admin@foiaonline.gov>  
**Sent:** Sunday, June 30, 2019 12:01 AM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>  
**Subject:** FOIA Request EPA-HQ-2019-006941 Modified

The FOIA request - EPA-HQ-2019-006941 has been modified by the requester Kevin Bogardus. Additional details for this item are as follows:

- Tracking Number: EPA-HQ-2019-006941
- Requester: Kevin Bogardus
- Request Track: Simple
- Submitted Date: 06/29/2019
- Due Date: N/A
- Short Description: N/A
- Description: I request emails sent to and from the following individuals at EPA related to the preparation, creation, release and reaction to the June 26, 2019 EPA final rule entitled "Freedom of Information Act Regulations Update" from Oct. 1, 2018 to July 1, 2019:

Timothy Epp  
Elise Packard  
Christopher Creech

Elizabeth White  
Brian Hope

Please consider emails containing one or more of the following search terms as responsive records to my request:

"basis of responsiveness" OR  
"authority to issue final determinations" OR  
"RIN 2015-AA02" OR  
"Society of Environmental Journalists" OR  
"SEJ" OR  
"Meaghan Parker" OR  
"Meahan E. Parker"

Please do not consider responsive records to this request as already publicly-released material, such as correspondence sent by members of the general public, email newsletters, email news alerts, news clippings and press releases, unless this material was emailed with commentary to and/or from one of the named individuals in this request.

Please click on this link for more detail on this final rule (<https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13290.pdf>).

Message

---

**From:** Creech, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=87B8993F1A0E42FCB26D654DD8F2E377-CREECH, CHR]  
**Sent:** 2/27/2019 7:21:38 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** RE: DRAFT Phase I FOIA Regs Package 02.27.2019

# Ex. 5 AC/DP

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E

---

**From:** Creech, Christopher  
**Sent:** Wednesday, February 27, 2019 1:50 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>  
**Subject:** DRAFT Phase I FOIA Regs Package 02.27.2019

Hello Tim,

Attached is the package of draft phase I FOIA regulations. The three attachments are:

- A "clean" version of the preamble and regulatory text
- A "redline" version of the regulatory text
- An explanation of changes made in phase I, with citations to both of the aforementioned documents.

Thank you,

Christopher T. Creech  
Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
(202) 564-4286  
Room 7353 E  
[Creech.Christopher@EPA.gov](mailto:Creech.Christopher@EPA.gov)



Message

---

**From:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Sent:** 6/27/2019 8:59:51 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Dibble, Christine [Dibble.Christine@epa.gov]  
**Subject:** RE: EPA's Response to Society of Environmental Journalists

Thanks much

---

**From:** Epp, Timothy  
**Sent:** Thursday, June 27, 2019 4:59 PM  
**To:** Grantham, Nancy <Grantham.Nancy@epa.gov>; Dibble, Christine <Dibble.Christine@epa.gov>  
**Subject:** RE: EPA's Response to Society of Environmental Journalists

Sorry for chiming in late – I think this works.

**Timothy R. Epp**

| [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Grantham, Nancy  
**Sent:** Thursday, June 27, 2019 4:49 PM  
**To:** Dibble, Christine <[Dibble.Christine@epa.gov](mailto:Dibble.Christine@epa.gov)>  
**Cc:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Subject:** RE: EPA's Response to Society of Environmental Journalists

I would go ahead and go live and then if tim has edits, we can make them thanks ng

---

**From:** Dibble, Christine  
**Sent:** Thursday, June 27, 2019 4:32 PM  
**To:** Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>  
**Subject:** RE: EPA's Response to Society of Environmental Journalists

Update to first screenshot:



# Ex. 5 Deliberative Process (DP)

## Christine Dibble

Senior Web Content Strategist,  
Office of Web Communications  
U.S. Environmental Protection Agency  
Mail Code 1701A  
Washington, D.C. 20460  
[dibble.christine@epa.gov](mailto:dibble.christine@epa.gov)  
Ph: 202-564-9147

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**From:** Dibble, Christine

**Sent:** Thursday, June 27, 2019 4:18 PM

**To:** Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>

**Subject:** RE: EPA's Response to Society of Environmental Journalists

Two screenshots below:

## **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

**Christine Dibble**

Senior Web Content Strategist,  
Office of Web Communications  
U.S. Environmental Protection Agency  
Mail Code 1701A  
Washington, D.C. 20460  
[dibble.christine@epa.gov](mailto:dibble.christine@epa.gov)  
Ph: 202-564-9147

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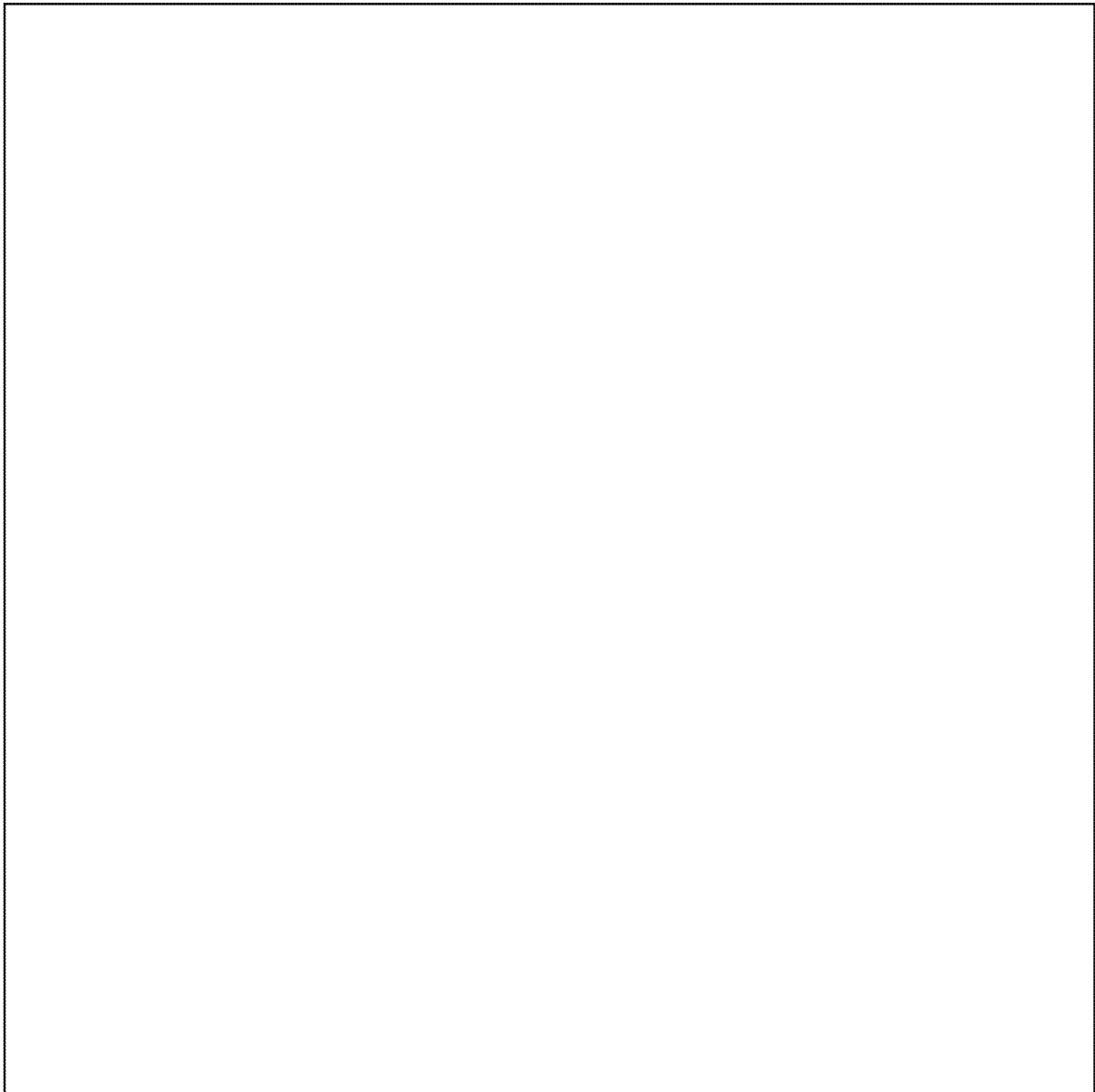
**From:** Grantham, Nancy  
**Sent:** Thursday, June 27, 2019 3:59 PM  
**To:** Dibble, Christine <[Dibble.Christine@epa.gov](mailto:Dibble.Christine@epa.gov)>  
**Cc:** AO OPA Media Relations <[AO\\_OPA\\_Media\\_Relations@epa.gov](mailto:AO_OPA_Media_Relations@epa.gov)>  
**Subject:** FW: EPA's Response to Society of Environmental Journalists

Once this is posted .. this can be linked on the page christine is working on thanks ng

---

**From:** EPA Press Office <[press@epa.gov](mailto:press@epa.gov)>  
**Sent:** Thursday, June 27, 2019 3:56 PM  
**To:** Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>  
**Subject:** EPA's Response to Society of Environmental Journalists

---



## **EPA's Response to Society of Environmental Journalists**

.....

This week several media outlets misrepresented EPA's new FOIA regulation, and were forced to correct their misreporting. This new regulation brings the Agency into compliance with the Congressional amendments to FOIA from 2007, 2009, and 2016. Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations. The Obama administration failed to meet this deadline.

Yesterday, the Society of Environmental Journalists (SEJ), whose mission states that they strive to "strengthen the quality" of environmental journalism, sent a letter to EPA Administrator Andrew Wheeler which included numerous inaccuracies that were regurgitated from false articles. Below is EPA's response to the SEJ, signed by EPA career officials.

XXXXXXXXXXXXXXXXXXXX

**BELOW IS THE LETTER IN FULL:**

Dear Director Parker:

On behalf of the Administrator of the U.S. Environmental Protection Agency, we write in response to your letter dated, June 26, 2019. Together we manage the Agency's National Freedom of Information Act Office, which advises the Agency on legal issues pertaining to FOIA requests, coordination, and project management. Additionally, we are the two career attorneys tasked with providing the recommendations to update the Agency's FOIA regulations.

This week EPA finalized an updated FOIA regulation that brings the Agency into compliance with a series of Congressional amendments. Unfortunately, a series of false and misleading claims have relayed inaccurate information to the public about this updated regulation. The Agency believes it is important to address these significant misrepresentations and emphasize that the update to the Agency's FOIA regulation in no way expands or increases the authority of political officials in the FOIA process. The Agency's updated regulation does not grant political officials' additional authority to review or withhold FOIA documents, their authority will remain consistent with the authority granted to them under the past regulation.

**1. EPA did not expand political officials' oversight of FOIA responses.**

EPA's updated FOIA regulation did not change the political officials with FOIA decisionmaking authority or expand their authority.

In fact, the FOIA decisionmakers identified in EPA's updated regulation are nearly identical to the list in EPA's old regulations at 40 CFR 2.104(h).

EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decisionmaking authority under the statute, itself. The updated regulations have not increased or otherwise altered the Administrator's authority to make decisions under FOIA.

EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decisionmaking authority under the regulations as "designees." Deputies most frequently include the top career official in each program and regional office. Rather than expanding political officials' oversight - which this language did not do -- this change expressly recognizes the role of career officials.

In fact, FOIA responses are rarely, issued by political employees -- to the contrary, such decisions typically are issued at the career director or career branch chief level. The updated regulation is not expected to impact or alter that practice.

**2. EPA did not expand political officials' power.**

EPA's updated regulation did not and cannot change the statute Congress passed.

FOIA determinations have always included decisions to withhold records or to issue "no records" responses. The updated regulation does not grant more power than EPA's prior regulations.

EPA's prior rules provided in section 104(g) that "[a]n adverse determination consists of . . . a determination that a requested record does not exist or cannot be located[.]" EPA's new updated regulation does not state anything more than this.

### **3. EPA's decision to centralize the intake process will speed FOIA processing, not slow it.**

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies "centralize FOIA processing where appropriate." Centralized FOIA submission will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

Many other departments and agencies have gone further than EPA in streamlining the FOIA processing, such as Department of State, USAID, Social Security Administration (in the Office of General Counsel), the Securities and Exchange Commission, and Commodity Futures Trading Commission (in the Office of General Counsel), among others. EPA has left the FOIA response decisionmaking authority with the offices that are document custodians. Department of Labor has a similar centralized FOIA submission mailbox and decentralized FOIA processing and response structure.

Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters.

### **4. EPA's decision to publish a final rule does not violate Administrative law**

EPA's decision to increase efficiency by providing a single location for the public to submit FOIA requests is a procedural rule that does not require notice and comment under the Administrative Procedure Act.

EPA also published its FOIA updated regulation as a final rule without notice and public comment because EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.

Many other agencies similarly published final rules to implement these amendments without notice and comment. Those include:

- Housing and Urban Development, 82 FR 3619 (01/12/2017)
- NEH, National Foundation on the Arts and the Humanities, 82 FR 44 (01/03/2017)
- U.S. Nuclear Regulatory Commission, 81 FR 96344 (12/30/2016)
- Department of Energy, 81 FR 94915 (12/27/2016)
- U.S. International Trade Commission, 81 FR 86575 (12/01/2016)
- Farm Credit Administration, 81 FR 63365 (09/15/2019)
- Surface Transportation Board, 81 FR 90750 (12/15/2019)
- Office of Special Counsel, 82 FR 15609 (03/30/2017)
- National Labor Relations Board, 82 FR 11748 (02/24/2017)
- National Council on Disability, 81 FR 93791 (12/22/2016)
- Tennessee Valley Authority, 82 FR 41511 (09/01/2017)
- Defense Nuclear Facilities Safety Board, 82 FR 30722 (07/03/2017)

## **5. EPA regions are still empowered to grant requests**

Under the updated regulation regional offices have the authority to grant FOIA requests.

The updated regulation only centralizes the intake of FOIA requests to the National FOIA Office; it does not centralize the searching, reviewing, or production of records.

The updated regulation, like the 2002 regulations, continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.

Best Regards,

Elise Packard, Acting Deputy General Counsel for Operations

Timothy Epp, Acting Director, National EPA FOIA Office

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Newsroom**



U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20004



[Unsubscribe](#)

■



Message

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**From:** Hope, Brian [Hope.Brian@epa.gov]  
**Sent:** 6/26/2019 8:21:11 PM  
**To:** CMS.OEX [cms.oex@epa.gov]  
**CC:** White, Elizabeth [white.elizabeth@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** FW: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"  
**Attachments:** Administrator Wheeler\_SEJ\_June262019.pdf

Reading file

**From:** Meaghan Parker <mparker@sej.org>  
**Sent:** Wednesday, June 26, 2019 12:55 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Mutz, John (Fletcher) <mutz.john@epa.gov>; Creech, Christopher <Creech.Christopher@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>  
**Subject:** Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"

Dear Administrator Wheeler:

The Society of Environmental Journalists (SEJ) objects to EPA's June 26 Final Rulemaking entitled "Freedom of Information Act Regulations Update." It enables the agency to limit public access to EPA records that are legally public information. Moreover, the highly irregular procedure of issuing a final rule without proposal or public comments is unjustified and unlawful under the Administrative Procedure Act (APA).

SEJ is a professional and educational organization that represents 1,400 environmental journalists, professors and students. Our members, on behalf of the public, rely on FOIA to help the public understand the work of the U.S. Environmental Protection Agency. We are deeply concerned that the published FOIA rule changes will seriously harm the public's right to know.

Your claim to exempt this rulemaking from normal APA proposal-and-comment procedures is highly unusual and unwarranted. Moreover, we believe that it serves only to shield highly political decisions from public scrutiny. Neither the procedural nor the good cause exemptions to the APA apply to important parts of this rulemaking — which go beyond required updates to the regulation to drastically change EPA's handling of information requests. We strongly disagree with EPA's assertion that public discussion of this rulemaking is "impracticable, unnecessary, or contrary to the public interest." Circumventing the usual public comment process is a violation of the public trust and silences the voices of the citizens the EPA is bound to protect.

One of the rule's most worrisome changes grants authority to the Administrator (and a hierarchy of other political appointees) to determine which records are "responsive" to a FOIA request. This determination takes place entirely before the records are reviewed or redacted for legitimate FOIA exemptions. It is arbitrary and invisible, and virtually impossible to appeal, because the agency need not disclose to the requester what records were initially found or why they were deemed non-responsive. This provision badly distorts the true and proper meaning, under FOIA, of "responsiveness."

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Many of our members report that EPA's lack of speedy handling of, and responsiveness to, FOIA requests already makes it difficult for them to do their job of informing the public about the environment in which they live. This new rule, we believe, will make that job even more difficult. It will impede the public's access to environmental information and its right to know how tax dollars are spent.

We call on you to withdraw this rule and submit it for standard notice and comment as a proposal — thereby allowing a proper, meaningful public evaluation of its consequences.

Sincerely,  
Meaghan E. Parker  
Executive Director

Cc: [leopold.matt@epa.gov](mailto:leopold.matt@epa.gov)  
[mutz.john@epa.gov](mailto:mutz.john@epa.gov)  
[creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)  
[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)

---

Meaghan Parker  
Executive Director  
Society of Environmental Journalists  
P:(202) 558-2033 E: [mparker@sej.org](mailto:mparker@sej.org)





# Society of Environmental Journalists

1629 K Street NW, Suite 300, Washington, DC 20006  
Phone: 202-658-2055 • [sej@sej.org](mailto:sej@sej.org) • [www.sej.org](http://www.sej.org)

June 26, 2019

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Aubudon

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MSU

*Executive Director:*  
Meaghan E. Parker



The Honorable Andrew Wheeler  
Office of the Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. Mail Code: 1101A  
Washington, DC 20460  
[wheeler.andrew@epa.gov](mailto:wheeler.andrew@epa.gov)

Dear Administrator Wheeler:

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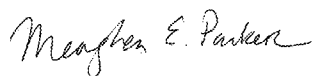
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Sincerely,



Meaghan E. Parker  
Executive Director

CC: Matthew Z. Leopold, General Counsel  
Christopher T. Creech  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (Mail Code: 2310A)  
Washington, DC 20460  
[leopold.matt@epa.gov](mailto:leopold.matt@epa.gov)  
[mutz.john@epa.gov](mailto:mutz.john@epa.gov)  
[creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)

Corry Schiermeyer, Associate Administrator  
Office of Public Affairs  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (Mail 1701A)  
Washington, DC 20460  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)  
[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)

Message

---

**From:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Sent:** 6/27/2019 8:34:24 PM  
**To:** Dibble, Christine [Dibble.Christine@epa.gov]  
**CC:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** RE: EPA's Response to Society of Environmental Journalists

Looping time pp

---

**From:** Dibble, Christine  
**Sent:** Thursday, June 27, 2019 4:32 PM  
**To:** Grantham, Nancy <Grantham.Nancy@epa.gov>  
**Subject:** RE: EPA's Response to Society of Environmental Journalists

Update to first screenshot:

# Ex. 5 Deliberative Process (DP)

**Christine Dibble**  
Senior Web Content Strategist,  
Office of Web Communications  
U.S. Environmental Protection Agency  
Mail Code 1701A  
Washington, D.C. 20460  
[dibble.christine@epa.gov](mailto:dibble.christine@epa.gov)  
Ph: 202-564-9147

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**From:** Dibble, Christine  
**Sent:** Thursday, June 27, 2019 4:18 PM

**To:** Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>

**Subject:** RE: EPA's Response to Society of Environmental Journalists

Two screenshots below:

## **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

**Christine Dibble**

Senior Web Content Strategist,  
Office of Web Communications  
U.S. Environmental Protection Agency  
Mail Code 1701A  
Washington, D.C. 20460  
[dibble.christine@epa.gov](mailto:dibble.christine@epa.gov)  
Ph: 202-564-9147

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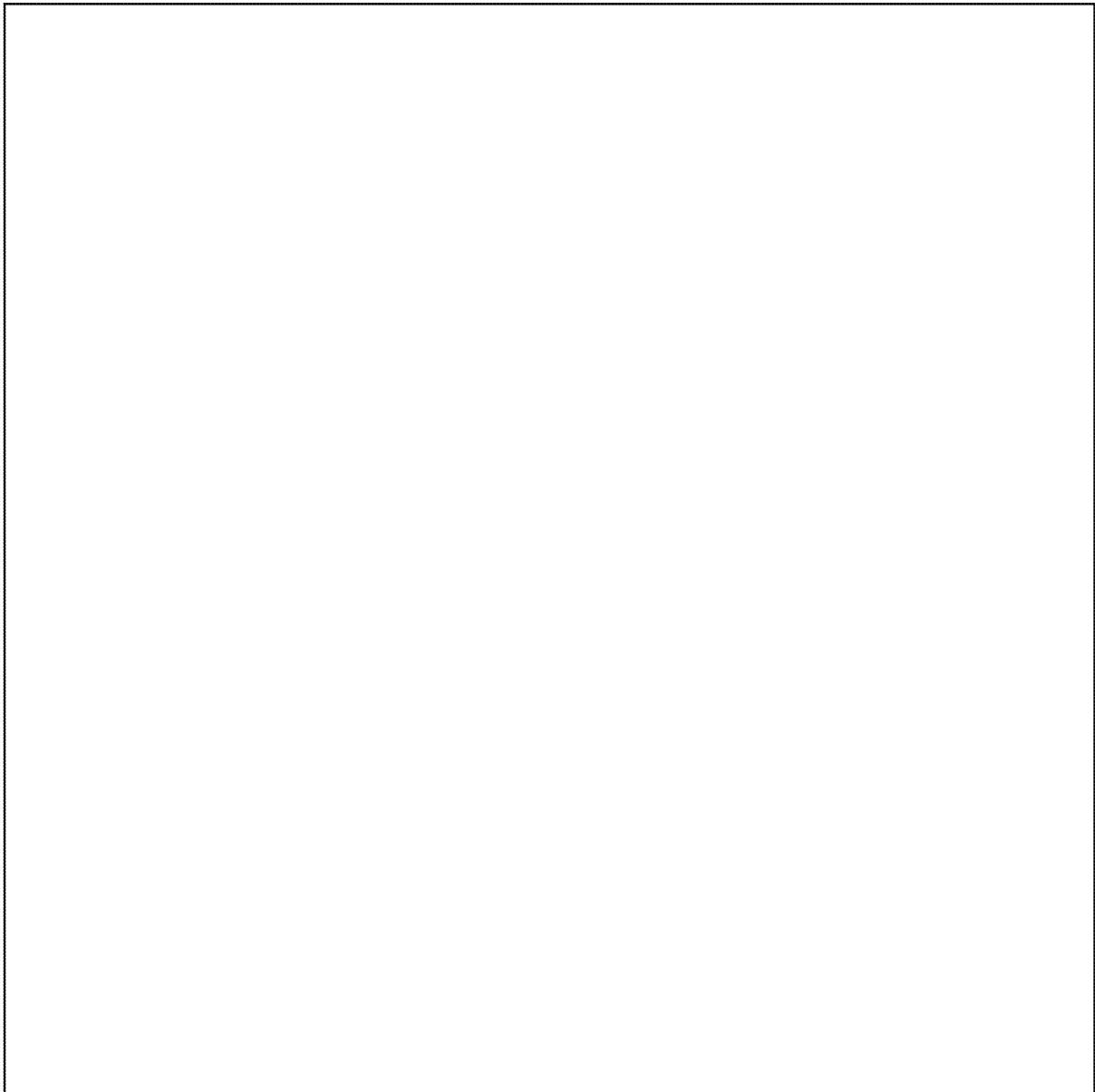
**From:** Grantham, Nancy  
**Sent:** Thursday, June 27, 2019 3:59 PM  
**To:** Dibble, Christine <[Dibble.Christine@epa.gov](mailto:Dibble.Christine@epa.gov)>  
**Cc:** AO OPA Media Relations <[AO\\_OPA\\_Media\\_Relations@epa.gov](mailto:AO_OPA_Media_Relations@epa.gov)>  
**Subject:** FW: EPA's Response to Society of Environmental Journalists

Once this is posted .. this can be linked on the page christine is working on thanks ng

---

**From:** EPA Press Office <[press@epa.gov](mailto:press@epa.gov)>  
**Sent:** Thursday, June 27, 2019 3:56 PM  
**To:** Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>  
**Subject:** EPA's Response to Society of Environmental Journalists

---



## **EPA's Response to Society of Environmental Journalists**

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This week several media outlets misrepresented EPA's new FOIA regulation, and were forced to correct their misreporting. This new regulation brings the Agency into compliance with the Congressional amendments to FOIA from 2007, 2009, and 2016. Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations. The Obama administration failed to meet this deadline.

Yesterday, the Society of Environmental Journalists (SEJ), whose mission states that they strive to "strengthen the quality" of environmental journalism, sent a letter to EPA Administrator Andrew Wheeler which included numerous inaccuracies that were regurgitated from false articles. Below is EPA's response to the SEJ, signed by EPA career officials.



XXXXXXXXXXXXXXXXXXXX

**BELOW IS THE LETTER IN FULL:**

Dear Director Parker:

On behalf of the Administrator of the U.S. Environmental Protection Agency, we write in response to your letter dated, June 26, 2019. Together we manage the Agency's National Freedom of Information Act Office, which advises the Agency on legal issues pertaining to FOIA requests, coordination, and project management. Additionally, we are the two career attorneys tasked with providing the recommendations to update the Agency's FOIA regulations.

This week EPA finalized an updated FOIA regulation that brings the Agency into compliance with a series of Congressional amendments. Unfortunately, a series of false and misleading claims have relayed inaccurate information to the public about this updated regulation. The Agency believes it is important to address these significant misrepresentations and emphasize that the update to the Agency's FOIA regulation in no way expands or increases the authority of political officials in the FOIA process. The Agency's updated regulation does not grant political officials' additional authority to review or withhold FOIA documents, their authority will remain consistent with the authority granted to them under the past regulation.

**1. EPA did not expand political officials' oversight of FOIA responses.**

EPA's updated FOIA regulation did not change the political officials with FOIA decisionmaking authority or expand their authority.

In fact, the FOIA decisionmakers identified in EPA's updated regulation are nearly identical to the list in EPA's old regulations at 40 CFR 2.104(h).

EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decisionmaking authority under the statute, itself. The updated regulations have not increased or otherwise altered the Administrator's authority to make decisions under FOIA.

EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decisionmaking authority under the regulations as "designees." Deputies most frequently include the top career official in each program and regional office. Rather than expanding political officials' oversight - which this language did not do -- this change expressly recognizes the role of career officials.

In fact, FOIA responses are rarely, issued by political employees -- to the contrary, such decisions typically are issued at the career director or career branch chief level. The updated regulation is not expected to impact or alter that practice.

**2. EPA did not expand political officials' power.**

EPA's updated regulation did not and cannot change the statute Congress passed.

FOIA determinations have always included decisions to withhold records or to issue "no records" responses. The updated regulation does not grant more power than EPA's prior regulations.

EPA's prior rules provided in section 104(g) that "[a]n adverse determination consists of . . . a determination that a requested record does not exist or cannot be located[.]" EPA's new updated regulation does not state anything more than this.

### **3. EPA's decision to centralize the intake process will speed FOIA processing, not slow it.**

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies "centralize FOIA processing where appropriate." Centralized FOIA submission will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

Many other departments and agencies have gone further than EPA in streamlining the FOIA processing, such as Department of State, USAID, Social Security Administration (in the Office of General Counsel), the Securities and Exchange Commission, and Commodity Futures Trading Commission (in the Office of General Counsel), among others. EPA has left the FOIA response decisionmaking authority with the offices that are document custodians. Department of Labor has a similar centralized FOIA submission mailbox and decentralized FOIA processing and response structure.

Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters.

### **4. EPA's decision to publish a final rule does not violate Administrative law**

EPA's decision to increase efficiency by providing a single location for the public to submit FOIA requests is a procedural rule that does not require notice and comment under the Administrative Procedure Act.

EPA also published its FOIA updated regulation as a final rule without notice and public comment because EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.

Many other agencies similarly published final rules to implement these amendments without notice and comment. Those include:

- Housing and Urban Development, 82 FR 3619 (01/12/2017)
- NEH, National Foundation on the Arts and the Humanities, 82 FR 44 (01/03/2017)
- U.S. Nuclear Regulatory Commission, 81 FR 96344 (12/30/2016)
- Department of Energy, 81 FR 94915 (12/27/2016)
- U.S. International Trade Commission, 81 FR 86575 (12/01/2016)
- Farm Credit Administration, 81 FR 63365 (09/15/2019)
- Surface Transportation Board, 81 FR 90750 (12/15/2019)
- Office of Special Counsel, 82 FR 15609 (03/30/2017)
- National Labor Relations Board, 82 FR 11748 (02/24/2017)
- National Council on Disability, 81 FR 93791 (12/22/2016)
- Tennessee Valley Authority, 82 FR 41511 (09/01/2017)
- Defense Nuclear Facilities Safety Board, 82 FR 30722 (07/03/2017)

## **5. EPA regions are still empowered to grant requests**

Under the updated regulation regional offices have the authority to grant FOIA requests.

The updated regulation only centralizes the intake of FOIA requests to the National FOIA Office; it does not centralize the searching, reviewing, or production of records.

The updated regulation, like the 2002 regulations, continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.

Best Regards,

Elise Packard, Acting Deputy General Counsel for Operations

Timothy Epp, Acting Director, National EPA FOIA Office

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U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20004



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■

**From:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**Sent:** 6/26/2019 4:56:39 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]  
**Subject:** Fwd: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"  
**Attachments:** Administrator Wheeler\_SEJ\_June262019.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** Meaghan Parker <mparker@sej.org>  
**Date:** June 26, 2019 at 12:54:40 PM EDT  
**To:** [wheeler.andrew@epa.gov](mailto:wheeler.andrew@epa.gov)  
**Cc:** [leopold.matt@epa.gov](mailto:leopold.matt@epa.gov), [mutz.john@epa.gov](mailto:mutz.john@epa.gov), [creech.christopher@epa.gov](mailto:creech.christopher@epa.gov),  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov), [abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)  
**Subject:** **Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"**

Dear Administrator Wheeler:

The Society of Environmental Journalists (SEJ) objects to EPA's June 26 Final Rulemaking entitled "Freedom of Information Act Regulations Update." It enables the agency to limit public access to EPA records that are legally public information. Moreover, the highly irregular procedure of issuing a final rule without proposal or public comments is unjustified and unlawful under the Administrative Procedure Act (APA).

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Executive Director

Cc: [leopold.matt@epa.gov](mailto:leopold.matt@epa.gov)  
[mutz.john@epa.gov](mailto:mutz.john@epa.gov)  
[creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)  
[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)

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**Meaghan Parker**  
**Executive Director**  
**Society of Environmental Journalists**  
P:(202) 558-2033 E: [mparker@sej.org](mailto:mparker@sej.org)





# Society of Environmental Journalists

1629 K Street NW, Suite 300, Washington, DC 20006  
Phone: 202-658-2055 • [sej@sej.org](mailto:sej@sej.org) • [www.sej.org](http://www.sej.org)

June 26, 2019

## Board of Directors

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Bloomberg Environment

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Susan Moran  
Independent Journalist

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National Geographic (retired)

Jeff Burnside  
Independent Journalist

Gloria Dickie  
Independent Journalist

Breanna Draxler  
Independent Journalist

Judy Fahys  
InsideClimate News

Emily Gertz  
*(de)regulation nation*

Lyndsey Gilpin  
Independent Journalist

Meera Subramanian  
Independent Journalist

Roger Witherspoon  
Independent Journalist

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Michigan State University

*Representative for Associate  
Membership:* Jennifer Bogo  
Auburn

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MSU

*Executive Director:*  
Meaghan E. Parker



The Honorable Andrew Wheeler  
Office of the Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. Mail Code: 1101A  
Washington, DC 20460  
[wheeler.andrew@epa.gov](mailto:wheeler.andrew@epa.gov)

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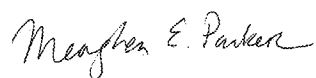
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Sincerely,



Meaghan E. Parker  
Executive Director

CC: Matthew Z. Leopold, General Counsel  
Christopher T. Creech  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (Mail Code: 2310A)  
Washington, DC 20460  
[leopold.matt@epa.gov](mailto:leopold.matt@epa.gov)  
[mutz.john@epa.gov](mailto:mutz.john@epa.gov)  
[creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)

Corry Schiermeyer, Associate Administrator  
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U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (Mail 1701A)  
Washington, DC 20460  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)  
[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)



Message

---

**From:** admin@foiaonline.gov [admin@foiaonline.gov]  
**Sent:** 6/30/2019 2:04:57 AM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** FOIA Request EPA-HQ-2019-006941 Modified

The FOIA request - EPA-HQ-2019-006941 has been modified by the requester Kevin Bogardus. Additional details for this item are as follows:

- Tracking Number: EPA-HQ-2019-006941
- Requester: Kevin Bogardus
- Request Track: Simple
- Submitted Date: 06/29/2019
- Due Date: N/A
- Short Description: N/A
- Description: I request emails sent to and from the following individuals at EPA related to the preparation, creation, release and reaction to the June 26, 2019 EPA final rule entitled "Freedom of Information Act Regulations Update" from Oct. 1, 2018 to July 1, 2019:

Timothy Epp  
Elisa Packard  
Christopher Creech  
Elizabeth White  
Brian Hope

Please consider emails containing one or more of the following search terms as responsive records to my request:

"basis of responsiveness" OR  
"authority to issue final determinations" OR  
"RIN 2015-AA02" OR  
"Society of Environmental Journalists" OR  
"SEJ" OR  
"Meaghan Parker" OR  
"Meahan E. Parker"

Please do not consider responsive records to this request as already publicly-released material, such as correspondence sent by members of the general public, email newsletters, email news alerts, news clippings and press releases, unless this material was emailed with commentary to and/or from one of the named individuals in this request.

Please click on this link for more detail on this final rule (<https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13290.pdf>).

Message

---

**From:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Sent:** 6/27/2019 7:34:42 PM  
**To:** Packard, Elise [Packard.Elise@epa.gov]; Stachowiak, Robert [Stachowiak.Robert@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]  
**Subject:** FW: EPA's Response to Society of Environmental Journalists Letter - Preview  
**Attachments:** 2019.6.27\_EPA\_SEJ.pdf

Can one of you call me asap .. need to coordinate posting this letter on the foia site

Thanks ng

---

**From:** Abboud, Michael  
**Sent:** Thursday, June 27, 2019 3:28 PM  
**To:** Grantham, Nancy <Grantham.Nancy@epa.gov>  
**Subject:** FW: EPA's Response to Society of Environmental Journalists Letter - Preview

---

**From:** Willey, Katharine  
**Sent:** Thursday, June 27, 2019 2:30 PM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>; Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>  
**Subject:** RE: EPA's Response to Society of Environmental Journalists Letter - Preview

## Ex. 5 Deliberative Process (DP)

# **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

---

**From:** Abboud, Michael

**Sent:** Thursday, June 27, 2019 2:00 PM

**To:** Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>; Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Willey, Katharine <[willey.katharine@epa.gov](mailto:willey.katharine@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>

**Subject:** FW: EPA's Response to Society of Environmental Journalists Letter - Preview

With updated edits.

---

**From:** EPA Press Office <[press@epa.gov](mailto:press@epa.gov)>

**Sent:** Thursday, June 27, 2019 1:59 PM

**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>

**Subject:** EPA's Response to Society of Environmental Journalists Letter - Preview

---

**EPA's Response to Society of Environmental Journalists**

# **Ex. 5 AC/DP**

# **Ex. 5 AC/DP**

# **Ex. 5 AC/DP**

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Washington, D.C. 20004

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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

Meahan E. Parker  
Executive Director  
Society of Environmental Journalists  
1629 K Street NW, Suite 300  
Washington, D.C. 20006

Dear Director Parker:

On behalf of the Administrator of the U.S. Environmental Protection Agency, we write in response to your letter dated, June 26, 2019. Together we manage the Agency's National Freedom of Information Act Office, which advises the Agency on legal issues pertaining to FOIA requests, coordination, and project management. Additionally, we are the two career attorneys tasked with providing the recommendations to update the Agency's FOIA regulations.

This week EPA finalized an updated FOIA regulation that brings the Agency into compliance with a series of Congressional amendments. Unfortunately, a series of false and misleading claims have relayed inaccurate information to the public about this updated regulation. The Agency believes it is important to address these significant misrepresentations and emphasize that the update to the Agency's FOIA regulation in no way expands or increases the authority of political officials in the FOIA process. The Agency's updated regulation does not grant political officials' additional authority to review or withhold FOIA documents, their authority will remain consistent with the authority granted to them under the past regulation.

### **1. EPA did not expand political officials' oversight of FOIA responses.**

EPA's updated FOIA regulation did not change the political officials with FOIA decisionmaking authority or expand their authority.

In fact, the FOIA decisionmakers identified in EPA's updated regulation are nearly identical to the list in EPA's old regulations at 40 CFR 2.104(h).

EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decisionmaking authority under the statute, itself. The updated regulations have not increased or otherwise altered the Administrator's authority to make decisions under FOIA.

EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decisionmaking authority under the regulations as "designees." Deputies most frequently include the top career official in each program and regional office. Rather than expanding political officials' oversight – which this language did not do — this change expressly recognizes the role of career officials.

In fact, FOIA responses are rarely, issued by political employees -- to the contrary, such decisions typically are issued at the career director or career branch chief level. The updated regulation is not expected to impact or alter that practice.

## **2. EPA did not expand political officials' power.**

EPA's updated regulation did not and cannot change the statute Congress passed.

FOIA determinations have always included decisions to withhold records or to issue "no records" responses. The updated regulation does not grant more power than EPA's prior regulations. EPA's prior rules provided in section 104(g) that "[a]n adverse determination consists of . . . a determination that a requested record does not exist or cannot be located[.]" EPA's new updated regulation does not state anything more than this.

## **3. EPA's decision to centralize the intake process will speed FOIA processing, not slow it.**

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies "centralize FOIA processing where appropriate." Centralized FOIA submission will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

Many other departments and agencies have gone further than EPA in streamlining the FOIA processing, such as Department of State, USAID, Social Security Administration (in the Office of General Counsel), the Securities and Exchange Commission, and Commodity Futures Trading Commission (in the Office of General Counsel), among others. EPA has left the FOIA response decisionmaking authority with the offices that are document custodians. Department of Labor has a similar centralized FOIA submission mailbox and decentralized FOIA processing and response structure.

Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters. Centralized FOIA intake will allow EPA to gain efficiencies of scale in training, build upon common skills needed to for intake, and enhance counseling and sharing of knowledge and techniques.

#### **4. EPA's decision to publish a final rule does not violate Administrative law**

EPA's decision to increase efficiency by providing a single location for the public to submit FOIA requests is a procedural rule that does not require notice and comment under the Administrative Procedure Act.

EPA also published its FOIA updated regulation as a final rule without notice and public comment because EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.

Many other agencies similarly published final rules to implement these amendments without notice and comment. Those include:

- Housing and Urban Development, 82 FR 3619 (01/12/2017)
- NEH, National Foundation on the Arts and the Humanities, 82 FR 44 (01/03/2017)
- U.S. Nuclear Regulatory Commission, 81 FR 96344 (12/30/2016)
- Department of Energy, 81 FR 94915 (12/27/2016)
- U.S. International Trade Commission, 81 FR 86575 (12/01/2016)
- Farm Credit Administration, 81 FR 63365 (09/15/2019)
- Surface Transportation Board, 81 FR 90750 (12/15/2019)
- Office of Special Counsel, 82 FR 15609 (03/30/2017)
- National Labor Relations Board, 82 FR 11748 (02/24/2017)
- National Council on Disability, 81 FR 93791 (12/22/2016)
- Tennessee Valley Authority, 82 FR 41511 (09/01/2017)
- Defense Nuclear Facilities Safety Board, 82 FR 30722 (07/03/2017)

#### **5. EPA regions are still empowered to grant requests**

Under the updated regulation regional offices have the authority to grant FOIA requests.

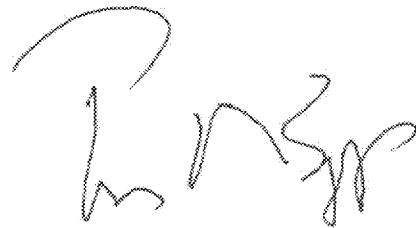
The updated regulation only centralizes the intake of FOIA requests to the National FOIA Office; it does not centralize the searching, reviewing, or production of records.

The updated regulation, like the 2002 regulations, continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.

Best Regards,



Elise Packard



Timothy R. Epp

Message

---

**From:** Packard, Elise [Packard.Elise@epa.gov]  
**Sent:** 6/26/2019 1:35:26 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**CC:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** RE: FOIA regulation -- need your input; & report re news media  
**Attachments:** Draft congressional letter on FOIA.ebp.docx

Some minor thoughts, looks good though!

Elise B. Packard  
Acting Deputy General Counsel  
U.S. EPA Office of General Counsel, Rm. 4020A  
(202) 564-7729

---

**From:** Epp, Timothy  
**Sent:** Wednesday, June 26, 2019 9:13 AM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Cc:** Packard, Elise <Packard.Elise@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** RE: FOIA regulation -- need your input; & report re news media

## Ex. 5 AC/DP

Tim

**Timothy R. Epp**  
| [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Leopold, Matt (OGC)  
**Sent:** Wednesday, June 26, 2019 8:03 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: FOIA regulation -- need your input; & report re news media

## Ex. 5 AC/DP

Matthew Z. Leopold

General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

---

**From:** Epp, Timothy  
**Sent:** Wednesday, June 26, 2019 7:37 AM  
**To:** Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** FOIA regulation -- need your input; & report re news media

**Ex. 5 AC/DP**

Tim

**Timothy R. Epp**  
| [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Leopold, Matt (OGC)  
**Sent:** Tuesday, June 25, 2019 5:27 PM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: FOIA regulation news media

**Ex. 5 AC/DP**

Thanks, Matt

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

---

**From:** Epp, Timothy  
**Sent:** Tuesday, June 25, 2019 4:41 PM  
**To:** Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>  
**Subject:** FOIA regulation news media

Matt,

**Ex. 5 AC/DP**

Tim

**From:** POLITICO Pro Energy Whiteboard <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>  
**Sent:** Tuesday, June 25, 2019 11:44 AM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>  
**Subject:** EPA to funnel all FOIA requests through legal office

By Alex Guillén

06/25/2019 11:42 AM EDT

EPA will consolidate all Freedom of Information Act requests into a central office in a move the agency says is meant to curb misdirected records requests.

In a final rule to be published in Wednesday's Federal Register, EPA makes a series of changes to its internal FOIA rules, which were last overhauled in 2002. Since then, Congress has passed three laws making significant changes to FOIA administration.

EPA says all FOIA requests will now be routed through its National FOIA Office in the Office of General Counsel. The public previously could choose to direct requests either to EPA headquarters or one of its ten regional offices. EPA said that having all requests clear through one office will "minimize the number of misdirected requests."

The rule also clarifies which officials have the "authority" to issue FOIA determinations, including to decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses." The list includes the administrator, deputy administrator, assistant administrators and their deputies and other specific top officials. EPA said the change "eliminates a potential conflict in the existing regulations and ensures consistency of responses across the Agency."

The agency made several other minor tweaks, such as a clarification that a request must be submitted by 5 p.m. ET to be deemed received on that date.

EPA also said it will undertake a separate rulemaking with public comment for "certain discretionary and modernizing changes that the EPA is considering." It didn't further describe those potential changes.

*To view online:*

<https://subscriber.politicopro.com/energy/whiteboard/2019/06/epa-to-funnel-all-foia-requests-through-legal-office-3484168>

### **Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

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Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Konkus, John

**Sent:** Tuesday, June 25, 2019 4:11 PM

**To:** Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>

**Cc:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica

<mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

**Subject:** RE: New headline, **Ex. 5 AC/DP**

After a long conversation with the editor, we got a formal correction and the article updated a second time:

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

*CORRECTION: A previous version of this story mischaracterized the scope of the new rule and misstated some of the authorities that come with it.*

---

**From:** Jackson, Ryan

**Sent:** Tuesday, June 25, 2019 2:22 PM

**To:** Konkus, John <konkus.john@epa.gov>

**Cc:** Abboud, Michael <abboud.michael@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

**Subject:** Re: New headline, **Ex. 5 AC/DP**

Is it enough?

Ryan Jackson  
Chief of Staff  
U.S. EPA

**Ex. 6 Personal Privacy (PP)**

On Jun 25, 2019, at 1:17 PM, Konkus, John <konkus.john@epa.gov> wrote:

**Ex. 5 AC/DP**

---

**From:** Abboud, Michael

**Sent:** Tuesday, June 25, 2019 2:14 PM

**To:** Konkus, John <konkus.john@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

**Subject:** New headline, **Ex. 5 AC/DP**

New:  
<image001.png>

Old:  
<image002.png>



**Michael Abboud**

U.S. Environmental Protection Agency

Office of Public Affairs

M: **Ex. 6 Personal Privacy (PP)**

**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 6/26/2019 10:25:08 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]  
**Subject:** EPA: Greens blast new FOIA regs -- Wednesday, June 26, 2019 -- www.eenews.net

<https://www.eenews.net/eenewspm/2019/06/26/stories/1060660107>

## Greens blast new FOIA regs

Kevin Bogardus, E&E News reporter Published: Wednesday, June 26, 2019

### EPA



Environmentalists are fretting over EPA's proposed Freedom of Information Act regulations. Senior Airman Kirby Turbak/Air Force

Environmental groups are assailing EPA for a proposed set of regulations dealing with how the agency handles the Freedom of Information Act.

Earlier today, EPA published in the *Federal Register* proposed regulations dealing with who can determine the agency's response to public records requests and who can accept them.

Critics of the agency under the Trump administration have already begun discussing the proposal, defended by EPA as necessary to bring clarity to the FOIA process and the agency in line with amendments passed by Congress in the last decade. Those critics, many of EPA's frequent FOIA litigants, believe the proposed regulations would result in more lawsuits for the agency.

Scrutiny has focused on language in the proposal that would give authority to top political officials like Administrator Andrew Wheeler to issue final determinations on responses to FOIA requests, including "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses."

Margaret Townsend, an open-government attorney with the Center for Biological Diversity, told E&E News it's not clear whether political appointees at EPA will know FOIA's requirements as well as agency records themselves like career staff do.

"This not only allows the decisionmaking power to be put in the hands of these political appointees, but it raises questions about whether their ability to issue a final determination will be compliant with the requirements of FOIA," Townsend told E&E News. She said that if EPA political appointees issue a "no records" response, "what assurances will requesters have that the agency conducted a proper search?"

Townsend added, "It just opens the door for more litigation."

In a statement yesterday, the Sierra Club, whose FOIA litigation revealed a variety of ethics flaps by the now-resigned EPA Administrator Scott Pruitt, blasted the proposal.

"The only good news about this rule is that it is obviously and in-your-face illegal, and we will fight it tooth and nail," said Pat Gallagher, director of the group's environmental law program.

Others saw problems with the "responsiveness" language as well, noting a U.S. Court of Appeals for the District of Columbia Circuit [opinion](#) in 2016 that found no basis in the law for agencies being allowed to redact particular information from within a responsive record.

"This new policy is doubly concerning because the law is clear that FOIA does not permit agencies — let alone political appointees — to withhold portions of records on 'the basis of responsiveness' at all," said Sanghyun Lee, an attorney with the Environmental Integrity Project.

"The D.C. Circuit has quite recently held that agencies have 'no authority' under FOIA to redact particular information from a responsive record on the theory that said information is 'nonresponsive.'"

EPA spokesman Michael Abboud said the determinations listed in the proposal have been available to agencies under FOIA and are similar to the previous version of EPA's FOIA rules from 17 years ago.

"All types of determinations listed in the rulemaking have been routinely available and used throughout FOIA history by all federal departments and agencies. EPA's 2002 FOIA regulations included a similar description with regard to 'no records' responses," Abboud said.

In a press release yesterday pushing back on media coverage of the proposal, EPA said its FOIA regulations are in line with the law and the courts.

"EPA's regulations cannot change federal statute. When an Agency discovers responsive documents they are released, in accordance with the law," the agency said.

Congress has amended FOIA three times — in 2007, 2009 and 2016 — since EPA last updated its FOIA regulations. The agency said its proposal published today brings it in line with those amendments.

The regulations will centralize EPA's FOIA process. The agency's 10 regional offices will no longer be able to accept requests. Instead, EPA's National FOIA office will be the entry point for all requests.

That has frustrated some of EPA's frequent FOIA users.

"EPA regional offices have been rare bright spots for transparency under the Trump administration," Austin Evers, executive director at American Oversight, said in a statement.

"Given the massive backlog of FOIA requests in EPA headquarters, it makes no sense to centralize even more work in Washington unless the political leadership's goal is to micromanage the public's access to public records."

EPA FOIA staff members have favored keeping those regional public records offices operating, according to a 2016 [report](#). A survey of those employees found 42% of respondents wanted "greater centralization" in their own program office or region. Meanwhile, 23% favored centralization of FOIA at headquarters.

Abboud said EPA expects to improve its FOIA process by centralizing it at headquarters, including better outreach to requesters. In addition, he noted the National Archives' FOIA Advisory Committee recommended in 2018 centralizing the public records process when appropriate.

Other moves on FOIA across the Trump administration have sparked a backlash.

The Department of the Interior issued its own FOIA regulations late last year, which have come under scrutiny from lawmakers. Groups have also filed a complaint with the Interior inspector general on whether FOIA responses have been screened under alleged political considerations (E&E News PM, June 17).

EPA's use of an "awareness review" process, allowing political appointees to review the contents of FOIA responses, sparked a subpoena threat last year from Rep. Elijah Cummings (D-Md.), now the chairman of the House Oversight and Reform Committee. The agency later issued a memo that political aides would have only three days to review those responses and not stall their release.

EPA's final rule on FOIA will go into effect July 26.

Not everyone agreed with that assessment.

"The highly irregular procedure of issuing a final rule without proposal or public comments is unjustified and unlawful under the Administrative Procedure Act (APA)," said Meaghan Parker, executive director of the Society of Environmental Journalists, in a letter today to Administrator Andrew Wheeler.

"NRDC would want to comment on this proposal," said John Walke, the Natural Resources Defense Council's clean air director. "It is indefensible to evade public notice and comment with this rulemaking, and reading between the lines, EPA knows this."

*Reporter Ariel Wittenberg contributed.*

Sent from my iPhone

Message

---

**From:** Epp, Timothy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=46B70972E0C7421A9A922EEAB6280211-TEPP]  
**Sent:** 6/27/2019 7:38:47 PM  
**To:** Grantham, Nancy [Grantham.Nancy@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Stachowiak, Robert [Stachowiak.Robert@epa.gov]  
**Subject:** RE: EPA's Response to Society of Environmental Journalists Letter - Preview

Just called – left a vm

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Grantham, Nancy  
**Sent:** Thursday, June 27, 2019 3:35 PM  
**To:** Packard, Elise <Packard.Elise@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>  
**Subject:** FW: EPA's Response to Society of Environmental Journalists Letter - Preview

Can one of you call me asap .. need to coordinate posting this letter on the foia site

Thanks ng

---

**From:** Abboud, Michael  
**Sent:** Thursday, June 27, 2019 3:28 PM  
**To:** Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>  
**Subject:** FW: EPA's Response to Society of Environmental Journalists Letter - Preview

---

**From:** Willey, Katharine  
**Sent:** Thursday, June 27, 2019 2:30 PM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>; Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>  
**Subject:** RE: EPA's Response to Society of Environmental Journalists Letter - Preview

# **Ex. 5 AC/DP**

# **Ex. 5 DPP/ACP**



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**From:** Abboud, Michael

**Sent:** Thursday, June 27, 2019 2:00 PM

**To:** Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Konkus, John <konkus.john@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Willey, Katharine <willey.katharine@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>

**Subject:** FW: EPA's Response to Society of Environmental Journalists Letter - Preview

With updated edits.

---

**From:** EPA Press Office <press@epa.gov>

**Sent:** Thursday, June 27, 2019 1:59 PM

**To:** Abboud, Michael <abboud.michael@epa.gov>

**Subject:** EPA's Response to Society of Environmental Journalists Letter - Preview

---

**Ex. 5 AC/DP**

# **Ex. 5 AC/DP**

# **Ex. 5 AC/DP**

# Ex. 5 AC/DP

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1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20004

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Message

**From:** Epp, Timothy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=46B70972E0C7421A9A922EEAB6280211-TEPP]  
**Sent:** 6/26/2019 4:34:48 PM  
**To:** Packard, Elise [Packard.Elise@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**CC:** Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** RE: FOIA regulation -- need your input; & report re news media  
**Attachments:** Draft congressional letter on FOIA June 26 noon.docx

# Ex. 5 AC/DP

Tim

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Packard, Elise  
**Sent:** Wednesday, June 26, 2019 9:35 AM  
**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: FOIA regulation -- need your input; & report re news media

Some minor thoughts, looks good though!

Elise B. Packard  
Acting Deputy General Counsel  
U.S. EPA Office of General Counsel, Rm. 4020A  
(202) 564-7729

---

**From:** Epp, Timothy  
**Sent:** Wednesday, June 26, 2019 9:13 AM  
**To:** Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
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**Sent:** Wednesday, June 26, 2019 8:03 AM

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**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** RE: FOIA regulation -- need your input; & report re news media

# Ex. 5 AC/DP

**Matthew Z. Leopold**

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

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**Subject:** RE: FOIA regulation news media

# Ex. 5 AC/DP

Thanks, Matt

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

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**Subject:** FOIA regulation news media

Matt,

# Ex. 5 AC/DP

## Ex. 5 AC/DP

I've copied the Politico story below.

Tim

**From:** POLITICO Pro Energy Whiteboard <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>  
**Sent:** Tuesday, June 25, 2019 11:44 AM  
**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>  
**Subject:** EPA to funnel all FOIA requests through legal office

By Alex Guillén

06/25/2019 11:42 AM EDT

EPA will consolidate all Freedom of Information Act requests into a central office in a move the agency says is meant to curb misdirected records requests.

In a final rule to be published in Wednesday's Federal Register, EPA makes a series of changes to its internal FOIA rules, which were last overhauled in 2002. Since then, Congress has passed three laws making significant changes to FOIA administration.

EPA says all FOIA requests will now be routed through its National FOIA Office in the Office of General Counsel. The public previously could choose to direct requests either to EPA headquarters or one of its ten regional offices. EPA said that having all requests clear through one office will "minimize the number of misdirected requests."

The rule also clarifies which officials have the "authority" to issue FOIA determinations, including to decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses." The list includes the administrator, deputy administrator, assistant administrators and their deputies and other specific top officials. EPA said the change "eliminates a potential conflict in the existing regulations and ensures consistency of responses across the Agency."

The agency made several other minor tweaks, such as a clarification that a request must be submitted by 5 p.m. ET to be deemed received on that date.



EPA also said it will undertake a separate rulemaking with public comment for "certain discretionary and modernizing changes that the EPA is considering." It didn't further describe those potential changes.

To view online:

<https://subscriber.politicopro.com/energy/whiteboard/2019/06/epa-to-funnel-all-foia-requests-through-legal-office-3484168>

**Timothy R. Epp**

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**To:** Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>

**Cc:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>

**Subject:** RE: New headline, **Ex. 5 AC/DP**

After a long conversation with the editor, we got a formal correction and the article updated a second time:

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

*CORRECTION: A previous version of this story mischaracterized the scope of the new rule and misstated some of the authorities that come with it.*

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**From:** Jackson, Ryan

**Sent:** Tuesday, June 25, 2019 2:22 PM

**To:** Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>

**Cc:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>

**Subject:** Re: New headline, **Ex. 5 AC/DP**

Is it enough?

Ryan Jackson  
Chief of Staff  
U.S. EPA

Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 1:17 PM, Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)> wrote:

**Ex. 5 AC/DP**

---

**From:** Abboud, Michael

**Sent:** Tuesday, June 25, 2019 2:14 PM

**To:** Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>

**Subject:** New headline,

**Ex. 5 AC/DP**

New:

<image001.png>

Old:

<image002.png>

**Michael Abboud**

U.S. Environmental Protection Agency

Office of Public Affairs

M:

Ex. 6 Personal Privacy (PP)

Message

---

**From:** Epp, Timothy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=46B70972E0C7421A9A922EEAB6280211-TEPP]  
**Sent:** 7/1/2019 11:22:04 AM  
**To:** Schumacher, Wendy [schumacher.wendy@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]  
**Subject:** FW: FOIA Request EPA-HQ-2019-006941 Modified

FYI

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

**From:** admin@foiaonline.gov <admin@foiaonline.gov>  
**Sent:** Sunday, June 30, 2019 12:01 AM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>  
**Subject:** FOIA Request EPA-HQ-2019-006941 Modified

The FOIA request - EPA-HQ-2019-006941 has been modified by the requester Kevin Bogardus. Additional details for this item are as follows:

- Tracking Number: EPA-HQ-2019-006941
- Requester: Kevin Bogardus
- Request Track: Simple
- Submitted Date: 06/29/2019
- Due Date: N/A
- Short Description: N/A
- Description: I request emails sent to and from the following individuals at EPA related to the preparation, creation, release and reaction to the June 26, 2019 EPA final rule entitled "Freedom of Information Act Regulations Update" from Oct. 1, 2018 to July 1, 2019:

Timothy Epp  
Elise Packard  
Christopher Creech  
Elizabeth White  
Brian Hope

Please consider emails containing one or more of the following search terms as responsive records to my request:

"basis of responsiveness" OR  
"authority to issue final determinations" OR  
"RIN 2015-AA02" OR  
"Society of Environmental Journalists" OR  
"SEJ" OR  
"Meaghan Parker" OR  
"Meahan E. Parker"

Please do not consider responsive records to this request as already publicly-released material, such as correspondence sent by members of the general public, email newsletters, email news alerts, news clippings and press releases, unless this material was emailed with commentary to and/or from one of the named individuals in this request.

Please click on this link for more detail on this final rule (<https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13290.pdf>).

Message

**From:** Epp, Timothy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=46B70972E0C7421A9A922EEAB6280211-TEPP]  
**Sent:** 6/26/2019 1:12:35 PM  
**To:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**CC:** Packard, Elise [Packard.Elise@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** RE: FOIA regulation -- need your input; & report re news media  
**Attachments:** Draft congressional letter on FOIA.docx

## Ex. 5 AC/DP

Tim

**Timothy R. Epp**

| National FOIA Office

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EPA Office of General Counsel

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**To:** Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** RE: FOIA regulation -- need your input; & report re news media

## Ex. 5 AC/DP

**Matthew Z. Leopold**

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

---

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**To:** Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
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## Ex. 5 AC/DP

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National FOIA Office  
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**Sent:** Tuesday, June 25, 2019 5:27 PM

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**Cc:** Packard, Elise <[Packard.Elise@epa.gov](mailto:Packard.Elise@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** RE: FOIA regulation news media

# Ex. 5 AC/DP

Thanks, Matt

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General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

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**From:** Epp, Timothy  
**Sent:** Tuesday, June 25, 2019 4:41 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Cc:** Packard, Elise <Packard.Elise@epa.gov>  
**Subject:** FOIA regulation news media

Matt,

# Ex. 5 AC/DP

## Ex. 5 AC/DP

I've copied the Politico story below.

Tim

**From:** POLITICO Pro Energy Whiteboard <politicoemail@politicopro.com>  
**Sent:** Tuesday, June 25, 2019 11:44 AM  
**To:** Abboud, Michael <abboud.michael@epa.gov>  
**Subject:** EPA to funnel all FOIA requests through legal office

By Alex Guillén

06/25/2019 11:42 AM EDT

EPA will consolidate all Freedom of Information Act requests into a central office in a move the agency says is meant to curb misdirected records requests.

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To view online:

<https://subscriber.politicopro.com/energy/whiteboard/2019/06/epa-to-funnel-all-foia-requests-through-legal-office-3484168>

### Timothy R. Epp

| National FOIA Office

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*CORRECTION: A previous version of this story mischaracterized the scope of the new rule and misstated some of the authorities that come with it.*

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**Cc:** Abboud, Michael <abboud.michael@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

**Subject:** Re: New headline; **Ex. 5 AC/DP**

Is it enough?

Ryan Jackson  
Chief of Staff  
U.S. EPA

**Ex. 6 Personal Privacy (PP)**

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**To:** Konkus, John <konkus.john@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

**Subject:** New headline; **Ex. 5 AC/DP**

New:  
<image001.png>

Old:  
<image002.png>

**Michael Abboud**  
U.S. Environmental Protection Agency  
Office of Public Affairs  
M: **Ex. 6 Personal Privacy (PP)**

Message

**From:** Epp, Timothy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=46B70972E0C7421A9A922EEAB6280211-TEPP]  
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# Ex. 5 AC/DP

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**Subject:** RE: FOIA regulation news media

# Ex. 5 AC/DP

# Ex. 5 AC/DP

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General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

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To view online:

<https://subscriber.politicopro.com/energy/whiteboard/2019/06/epa-to-funnel-all-foia-requests-through-legal-office-3484168>

## Timothy R. Epp

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

---

**From:** Konkus, John

**Sent:** Tuesday, June 25, 2019 4:11 PM

**To:** Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>

**Cc:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Epp, Timothy <[Epp.Timothy@epa.gov](mailto:Epp.Timothy@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>; Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>

**Subject:** RE: New headline: **Ex. 5 AC/DP**

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<mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

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Is it enough?

Ryan Jackson  
Chief of Staff  
U.S. EPA

**Ex. 6 Personal Privacy (PP)**

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**Subject:** New headline, **Ex. 5 AC/DP**

New:

<image001.png>

Old:

<image002.png>

**Michael Abboud**

U.S. Environmental Protection Agency  
Office of Public Affairs

M: **Ex. 6 Personal Privacy (PP)**

Message

---

**From:** Epp, Timothy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=46B70972E0C7421A9A922EEAB6280211-TEPP]  
**Sent:** 6/26/2019 11:37:13 AM  
**To:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**CC:** Packard, Elise [Packard.Elise@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]  
**Subject:** FOIA regulation -- need your input; & report re news media  
**Attachments:** DRAFT Messaging for FOIA Regulations Update (06.24.2019).docx

**Ex. 5 AC/DP**

Tim

**Timothy R. Epp**

| National FOIA Office

U.S. Environmental Protection Agency | Office of General Counsel

1200 Pennsylvania Avenue, N.W. (MC 2310A)

Washington, D.C. 20460 | WJCN 7309B

Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

**From:** Leopold, Matt (OGC)  
**Sent:** Tuesday, June 25, 2019 5:27 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>  
**Cc:** Packard, Elise <Packard.Elise@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Subject:** RE: FOIA regulation news media

# Ex. 5 AC/DP

Thanks, Matt

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

**From:** Epp, Timothy  
**Sent:** Tuesday, June 25, 2019 4:41 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Cc:** Packard, Elise <Packard.Elise@epa.gov>  
**Subject:** FOIA regulation news media

Matt,

# Ex. 5 AC/DP

**Ex. 5 AC/DP**

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Tim

**From:** POLITICO Pro Energy Whiteboard <politicoemail@politicopro.com>  
**Sent:** Tuesday, June 25, 2019 11:44 AM  
**To:** Abboud, Michael <abboud.michael@epa.gov>  
**Subject:** EPA to funnel all FOIA requests through legal office



By Alex Guillén

06/25/2019 11:42 AM EDT

EPA will consolidate all Freedom of Information Act requests into a central office in a move the agency says is meant to curb misdirected records requests.

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*To view online:*

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Old:

<image002.png>

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U.S. Environmental Protection Agency

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M: Ex. 6 Personal Privacy (PP)

Message

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**Sent:** 6/26/2019 10:57:34 PM  
**To:** Packard, Elise [Packard.Elise@epa.gov]  
**Subject:** insert

# Ex. 5 AC/DP

**Timothy R. Epp**

| [National FOIA Office](#)

U.S. Environmental Protection Agency | Office of General Counsel

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**Sent:** 6/25/2019 8:41:23 PM  
**To:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**CC:** Packard, Elise [Packard.Elise@epa.gov]  
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U.S. Environmental Protection Agency  
Office of Public Affairs

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**Sent:** 6/26/2019 4:56:38 PM  
**To:** Epp, Timothy [Epp.Timothy@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]  
**Subject:** Fwd: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"  
**Attachments:** Administrator Wheeler\_SEJ\_June262019.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** Meaghan Parker <[mparker@sej.org](mailto:mparker@sej.org)>  
**Date:** June 26, 2019 at 12:54:40 PM EDT  
**To:** [wheeler.andrew@epa.gov](mailto:wheeler.andrew@epa.gov)  
**Cc:** [leopold.matt@epa.gov](mailto:leopold.matt@epa.gov), [mutz.john@epa.gov](mailto:mutz.john@epa.gov), [creech.christopher@epa.gov](mailto:creech.christopher@epa.gov),  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov), [abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)  
**Subject:** **Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"**

Dear Administrator Wheeler:

The Society of Environmental Journalists (SEJ) objects to EPA's June 26 Final Rulemaking entitled "Freedom of Information Act Regulations Update." It enables the agency to limit public access to EPA records that are legally public information. Moreover, the highly irregular procedure of issuing a final rule without proposal or public comments is unjustified and unlawful under the Administrative Procedure Act (APA).

SEJ is a professional and educational organization that represents 1,400 environmental journalists, professors and students. Our members, on behalf of the public, rely on FOIA to help the public understand the work of the U.S. Environmental Protection Agency. We are deeply concerned that the published FOIA rule changes will seriously harm the public's right to know.

Your claim to exempt this rulemaking from normal APA proposal-and-comment procedures is highly unusual and unwarranted. Moreover, we believe that it serves only to shield highly political decisions from public scrutiny. Neither the procedural nor the good cause exemptions to the APA apply to important parts of this rulemaking — which go beyond required updates to the regulation to drastically change EPA's handling of information requests. We strongly disagree with EPA's assertion that public discussion of this rulemaking is "impracticable, unnecessary, or contrary to the public interest." Circumventing the usual public comment process is a violation of the public trust and silences the voices of the citizens the EPA is bound to protect.

One of the rule's most worrisome changes grants authority to the Administrator (and a hierarchy of other political appointees) to determine which records are "responsive" to a FOIA request. This determination takes place entirely before the records are reviewed or redacted for legitimate FOIA exemptions. It is arbitrary and invisible, and virtually impossible to appeal, because the agency need not disclose to the requester what records were initially found or why they were deemed non-responsive. This provision badly distorts the true and proper meaning, under FOIA, of "responsiveness."

Another disturbing change centralizes final authority to grant or deny FOIA requests in the political parts of EPA headquarters. By altogether removing the authority of Regional Offices to grant FOIA requests,



this change will slow and hobble the agency's already poor performance, in addition to politicizing the decision-making process.

The rule furthermore tries to legitimize the placement of the National FOIA Office under the Office of General Counsel. This is contrary to recent statutory changes, which emphasize the independence of the agency's Chief FOIA Officers.

Many of our members report that EPA's lack of speedy handling of, and responsiveness to, FOIA requests already makes it difficult for them to do their job of informing the public about the environment in which they live. This new rule, we believe, will make that job even more difficult. It will impede the public's access to environmental information and its right to know how tax dollars are spent.

We call on you to withdraw this rule and submit it for standard notice and comment as a proposal — thereby allowing a proper, meaningful public evaluation of its consequences.

Sincerely,  
Meaghan E. Parker  
Executive Director

Cc: [leopold.matt@epa.gov](mailto:leopold.matt@epa.gov)  
[mutz.john@epa.gov](mailto:mutz.john@epa.gov)  
[creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)  
[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)

---

**Meaghan Parker**  
**Executive Director**  
**Society of Environmental Journalists**  
P:(202) 558-2033 E: [mparker@sej.org](mailto:mparker@sej.org)





# Society of Environmental Journalists

1629 K Street NW, Suite 300, Washington, DC 20006  
Phone: 202-658-2055 • [sej@sej.org](mailto:sej@sej.org) • [www.sej.org](http://www.sej.org)

June 26, 2019

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*President:* Bobby Magill  
Bloomberg Environment

*Vice President, Programs:*  
Susan Moran  
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*Vice President, Membership:*  
Katy Daigle  
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Jeff Burnside  
Independent Journalist

Gloria Dickie  
Independent Journalist

Breanna Draxler  
Independent Journalist

Judy Fahys  
InsideClimate News

Emily Gertz  
*(de)regulation nation*

Lyndsey Gilpin  
Independent Journalist

Meera Subramanian  
Independent Journalist

Roger Witherspoon  
Independent Journalist

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Membership:* David Poulson  
Michigan State University

*Representative for Associate  
Membership:* Jennifer Bogo  
Aubudon

*Founding President:* Jim Detjen  
MSU

*Executive Director:*  
Meaghan E. Parker



The Honorable Andrew Wheeler  
Office of the Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. Mail Code: 1101A  
Washington, DC 20460  
[wheeler.andrew@epa.gov](mailto:wheeler.andrew@epa.gov)

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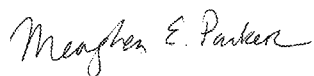
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1200 Pennsylvania Avenue NW (Mail Code: 2310A)  
Washington, DC 20460  
[leopold.matt@epa.gov](mailto:leopold.matt@epa.gov)  
[mutz.john@epa.gov](mailto:mutz.john@epa.gov)  
[creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)

Corry Schiermeyer, Associate Administrator  
Office of Public Affairs  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (Mail 1701A)  
Washington, DC 20460  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)  
[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)

Message

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**From:** Willey, Katharine [willey.katharine@epa.gov]  
**Sent:** 6/26/2019 6:38:37 PM  
**To:** Packard, Elise [Packard.Elise@epa.gov]  
**Subject:** RE: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"

Thank you!

---

**From:** Packard, Elise  
**Sent:** Wednesday, June 26, 2019 2:33 PM  
**To:** Willey, Katharine <willey.katharine@epa.gov>  
**Subject:** FW: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"

Elise B. Packard  
Acting Deputy General Counsel  
U.S. EPA Office of General Counsel, Rm. 4020A  
(202) 564-7729

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**From:** Epp, Timothy  
**Sent:** Wednesday, June 26, 2019 1:44 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>  
**Subject:** RE: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"

Yes – thanks.

**Timothy R. Epp**  
| [National FOIA Office](#)  
U.S. Environmental Protection Agency | Office of General Counsel  
1200 Pennsylvania Avenue, N.W. (MC 2310A)  
Washington, D.C. 20460 | WJCN 7309B  
Phone (202) 564-2830 | [epp.timothy@epa.gov](mailto:epp.timothy@epa.gov)



National FOIA Office  
EPA Office of General Counsel

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**From:** Fotouhi, David  
**Sent:** Wednesday, June 26, 2019 1:40 PM  
**To:** Epp, Timothy <Epp.Timothy@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>  
**Subject:** Fwd: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"

Making sure you've seen this incoming email from SEJ.

Sent from my iPhone

Begin forwarded message:

**From:** "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>  
**Date:** June 26, 2019 at 1:12:07 PM EDT  
**To:** "Jackson, Ryan" <jackson.ryan@epa.gov>, "Schiermeyer, Corry" <schiermeyer.corry@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Subject:** Re: Society of Environmental Journalists Letter re: "Freedom of Information Act Regulations Update"

## Ex. 5 AC/DP

Matt

Sent from my iPhone

On Jun 26, 2019, at 12:55 PM, Meaghan Parker <mparker@sej.org> wrote:

Dear Administrator Wheeler:

The Society of Environmental Journalists (SEJ) objects to EPA's June 26 Final Rulemaking entitled "Freedom of Information Act Regulations Update." It enables the agency to limit public access to EPA records that are legally public information. Moreover, the highly irregular procedure of issuing a final rule without proposal or public comments is unjustified and unlawful under the Administrative Procedure Act (APA).

SEJ is a professional and educational organization that represents 1,400 environmental journalists, professors and students. Our members, on behalf of the public, rely on FOIA to help the public understand the work of the U.S. Environmental Protection Agency. We are deeply concerned that the published FOIA rule changes will seriously harm the public's right to know.

Your claim to exempt this rulemaking from normal APA proposal-and-comment procedures is highly unusual and unwarranted. Moreover, we believe that it serves only to shield highly political decisions from public scrutiny. Neither the procedural nor the good cause exemptions to the APA apply to important parts of this rulemaking — which go beyond required updates to the regulation to drastically change EPA's handling of information requests. We strongly disagree with EPA's assertion that public discussion of this rulemaking is "impracticable, unnecessary, or contrary to the public interest." Circumventing the usual public comment process is a violation of the public trust and silences the voices of the citizens the EPA is bound to protect.

One of the rule's most worrisome changes grants authority to the Administrator (and a hierarchy of other political appointees) to determine which records are "responsive" to a FOIA request. This determination takes place entirely before the records are reviewed or redacted for legitimate FOIA exemptions. It is arbitrary and invisible, and virtually impossible to appeal, because the agency need not disclose to the requester what records were initially found or why they were deemed non-responsive. This provision badly distorts the true and proper meaning, under FOIA, of "responsiveness."

Another disturbing change centralizes final authority to grant or deny FOIA requests in the political parts of EPA headquarters. By altogether removing the authority of

Regional Offices to grant FOIA requests, this change will slow and hobble the agency's already poor performance, in addition to politicizing the decision-making process.

The rule furthermore tries to legitimize the placement of the National FOIA Office under the Office of General Counsel. This is contrary to recent statutory changes, which emphasize the independence of the agency's Chief FOIA Officers.

Many of our members report that EPA's lack of speedy handling of, and responsiveness to, FOIA requests already makes it difficult for them to do their job of informing the public about the environment in which they live. This new rule, we believe, will make that job even more difficult. It will impede the public's access to environmental information and its right to know how tax dollars are spent.

We call on you to withdraw this rule and submit it for standard notice and comment as a proposal — thereby allowing a proper, meaningful public evaluation of its consequences.

Sincerely,  
Meaghan E. Parker  
Executive Director

Cc: [leopold.matt@epa.gov](mailto:leopold.matt@epa.gov)  
[mutz.john@epa.gov](mailto:mutz.john@epa.gov)  
[creech.christopher@epa.gov](mailto:creech.christopher@epa.gov)  
[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)  
[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)

---

**Meaghan Parker**  
**Executive Director**  
**Society of Environmental Journalists**  
P:(202) 558-2033 E: [mparker@sej.org](mailto:mparker@sej.org)



<Administrator Wheeler\_SEJ\_June262019.pdf>

Message

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**From:** EPA Press Office [press@epa.gov]  
**Sent:** 6/27/2019 7:55:49 PM  
**To:** White, Elizabeth  
[white.elizabeth@epa.gov]  
**Subject:** EPA's Response to Society of  
Environmental Journalists

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## EPA's Response to Society of Environmental Journalists

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This week several media outlets misrepresented EPA's new FOIA regulation, and were forced to correct their misreporting. This new regulation brings the Agency into compliance with the Congressional amendments to FOIA from 2007, 2009, and 2016. Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations. The Obama administration failed to meet this deadline.

Yesterday, the Society of Environmental Journalists (SEJ), whose mission states that they strive to "strengthen the quality" of environmental journalism, sent a letter to EPA Administrator Andrew Wheeler which included numerous inaccuracies that were regurgitated from false articles. Below is EPA's response to the SEJ, signed by EPA career officials.

---

### BELOW IS THE LETTER IN FULL:

Dear Director Parker:

On behalf of the Administrator of the U.S. Environmental Protection Agency, we write in response to your letter dated, June 26, 2019. Together we manage the Agency's National Freedom of Information Act Office, which advises the Agency on legal issues pertaining to FOIA requests, coordination, and project management. Additionally, we are the two career attorneys tasked with providing the recommendations to update the Agency's FOIA regulations.

This week EPA finalized an updated FOIA regulation that brings the Agency into compliance with a series of Congressional amendments. Unfortunately, a series of false and misleading claims have relayed inaccurate information to the public about this updated regulation. The Agency believes it is important to address these significant misrepresentations and emphasize that the update to the Agency's FOIA regulation in no way expands or increases the authority of political officials in the FOIA process. The Agency's updated regulation does not grant political officials' additional authority to

review or withhold FOIA documents, their authority will remain consistent with the authority granted to them under the past regulation.

### **1. EPA did not expand political officials' oversight of FOIA responses.**

EPA's updated FOIA regulation did not change the political officials with FOIA decisionmaking authority or expand their authority.

In fact, the FOIA decisionmakers identified in EPA's updated regulation are nearly identical to the list in EPA's old regulations at 40 CFR 2.104(h).

EPA's updated regulation now expressly lists the Administrator, who always had full FOIA decisionmaking authority under the statute, itself. The updated regulations have not increased or otherwise altered the Administrator's authority to make decisions under FOIA.

EPA's updated regulation also expressly lists the Deputies in Program and Regional Offices. These officials always had FOIA decisionmaking authority under the regulations as "designees." Deputies most frequently include the top career official in each program and regional office. Rather than expanding political officials' oversight - which this language did not do - this change expressly recognizes the role of career officials.

In fact, FOIA responses are rarely, issued by political employees -- to the contrary, such decisions typically are issued at the career director or career branch chief level. The updated regulation is not expected to impact or alter that practice.

### **2. EPA did not expand political officials' power.**

EPA's updated regulation did not and cannot change the statute Congress passed.

FOIA determinations have always included decisions to withhold records or to issue "no records" responses. The updated regulation does not grant more power than EPA's prior regulations.

EPA's prior rules provided in section 104(g) that "[a]n adverse determination consists of . . . a determination that a requested record does not exist or cannot be located[.]" EPA's new updated regulation does not state anything more than this.

### **3. EPA's decision to centralize the intake process will speed FOIA processing, not slow it.**

EPA's decision to streamline submission of FOIA requests to its National FOIA Office will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.



In 2018, the FOIA Federal Advisory Committee, convened by the National Archives, recommended that federal departments and agencies “centralize FOIA processing where appropriate.” Centralized FOIA submission will allow EPA to ensure consistent and coordinated communication with the public, regions, and program offices.

Many other departments and agencies have gone further than EPA in streamlining the FOIA processing, such as Department of State, USAID, Social Security Administration (in the Office of General Counsel), the Securities and Exchange Commission, and Commodity Futures Trading Commission (in the Office of General Counsel), among others. EPA has left the FOIA response decisionmaking authority with the offices that are document custodians. Department of Labor has a similar centralized FOIA submission mailbox and decentralized FOIA processing and response structure.

Centralized FOIA intake and initial review will allow EPA to minimize coordination required for initial assignment of FOIA requests and to ensure consistency in early outreach to requesters.

#### **4. EPA’s decision to publish a final rule does not violate Administrative law**

EPA’s decision to increase efficiency by providing a single location for the public to submit FOIA requests is a procedural rule that does not require notice and comment under the Administrative Procedure Act.

EPA also published its FOIA updated regulation as a final rule without notice and public comment because EPA had no discretion for the changes mandated by the amendments to FOIA in 2007, 2009, and 2016.

Many other agencies similarly published final rules to implement these amendments without notice and comment. Those include:

- Housing and Urban Development, 82 FR 3619 (01/12/2017)
- NEH, National Foundation on the Arts and the Humanities, 82 FR 44 (01/03/2017)
- U.S. Nuclear Regulatory Commission, 81 FR 96344 (12/30/2016)
- Department of Energy, 81 FR 94915 (12/27/2016)
- U.S. International Trade Commission, 81 FR 86575 (12/01/2016)
- Farm Credit Administration, 81 FR 63365 (09/15/2019)
- Surface Transportation Board, 81 FR 90750 (12/15/2019)
- Office of Special Counsel, 82 FR 15609 (03/30/2017)
- National Labor Relations Board, 82 FR 11748 (02/24/2017)
- National Council on Disability, 81 FR 93791 (12/22/2016)
- Tennessee Valley Authority, 82 FR 41511 (09/01/2017)
- Defense Nuclear Facilities Safety Board, 82 FR 30722 (07/03/2017)

#### **5. EPA regions are still empowered to grant requests**

Under the updated regulation regional offices have the authority to grant FOIA requests.

The updated regulation only centralizes the intake of FOIA requests to the National FOIA Office; it does not centralize the searching, reviewing, or production of records.

The updated regulation, like the 2002 regulations, continues to provide regional administrators, their deputies, and delegates the authority to issue final determinations.

Best Regards,

Elise Packard, Acting Deputy General Counsel for Operations

Timothy Epp, Acting Director, National EPA FOIA Office

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Washington, D.C. 20004

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Message

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**From:** Hope, Brian [Hope.Brian@epa.gov]  
**Sent:** 6/28/2019 12:05:48 PM  
**To:** Leavy, Jacqueline [Leavy.Jacqueline@epa.gov]; Moritz, Brigitte [Moritz.Brigette@epa.gov]  
**CC:** Gaines, Cynthia [Gaines.Cynthia@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]  
**Subject:** FW: EPA's Response to Society of Environmental Journalists

The SEJ letter was in Wednesday's Reading File. Can you please make sure that this press release and the OGC letter are uploaded to the control? Obviously, we can then close it out. Thanks.

- Brian

---

**From:** EPA Press Office <press@epa.gov>  
**Sent:** Thursday, June 27, 2019 3:56 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Subject:** EPA's Response to Society of Environmental Journalists

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## EPA's Response to Society of Environmental Journalists

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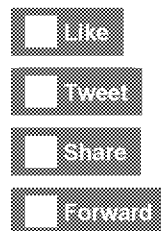
Best Regards,

Elise Packard, Acting Deputy General Counsel for Operations

Timothy Epp, Acting Director, National EPA FOIA Office

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